

185620

TRACTS

RELATIVE TO THE

HISTORY AND ANTIQUITIES

OF

SCOTLAND.

SIR DAVID DALRYMPLE OF HAILES,

BARONET.

EDINBURGH:

SOLD BY A. CONSTABLE.

1800.

TRACTS

RELATIVE TO THE

HISTORY AND ANTIQUITIES

OF

SCOTLAND



BY DAVID R. HARRIS

EDINBURGH

SOLD BY A. CONSTABLE

1804

ADVERTISEMENT.

THE high merit of various Tracts published by the late LORD HAILES, in illustration of the history and antiquities of Scotland, has long been known to the learned. These Tracts have now become rare, and have, of late, been usually sold at an advanced price. Having been fortunate enough to acquire a few remaining copies, I have put them together in a collected form, in the order of their original publication ; and I trust that, in doing so, I shall be thought to have made an acceptable present to the lovers of the genuine antiquities of their country.

A. C.

EDINBURGH, *June* 1800.

CONTENTS.

1. *A Catalogue of the Lords of Session, from the Institution of the College of Justice in 1532. Originally published in 1767. A new edition. Continued to the year 1799. To which is added, A Catalogue of the Faculty of Advocates to the year 1688.*
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4. *Historical Memorials concerning the Provincial Councils of the Scotch Clergy, from the earliest accounts to the era of the Reformation. 1769.*
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JUNE 1800.

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A
ADVERTISEMENT

CATALOGUE

IN drawing up this Catalogue, the Publisher has been assisted
by a Manuscript Abridgement of the *Books of Session*, or
Records of the Court of Session. OF formerly belonged to
Lord BURNHAM, one of the Judges in the reign of Charles
II. and was the property of Mr. James Clerk of Session.

THE LORDS OF SESSION,

The date prefixed to the name of each Judge before 1561,
is that of his first appointment FROM THE INSTITUTION OF
that of his admission. Previous to 1561, the time of reaching
the day of admission.

THE COLLEGE OF JUSTICE,

It is probable, that, in this Catalogue, the same Judges
are sometimes inserted twice, in the *Books of Session*, and then
by their ecclesiastical dignity of Bishops, or particular,
may be the case as to the Abbots of *St. Andrews*, *Culross*, and
this notice, will appear under the *Books of Session*, 10th March
1561.

IN THE YEAR 1532.

WITH HISTORICAL NOTES.

SUUM CUIQUE.—REPENDET POSTERITAS.

EDINBURGH:

PRINTED BY THOMAS RUDDIMAN.

1798.

CATALOGUE

THE LORDS OF SESSION

THE COLLEGE OF JUSTICE



SCOTTISH JURISPRUDENCE—REPRESENT HOSTILITIES

EDINBURGH:

PRINTED BY THOMAS RIDDIMAN.

ADVERTISEMENT.

IN drawing up this Catalogue, the Publisher has been assisted by a Manuscript Abridgement of the *Books of Sederunt*, or Records of the Court of Session. It formerly belonged to Lord PITMEDDEN, one of the Judges in the reign of Charles II. and was obligingly communicated by Mr Alexander Tait, Clerk of Session.

THE date prefixed to the name of each Judge before 1561, is that of his first appearance upon the *Books of Sederunt*, not that of his admission: Previous to 1561, the form of marking the day of admission was not observed.

It is probable, that, in this Catalogue, the same Judges are sometimes inserted twice; first by their names, and then by their ecclesiastical dignity of Abbots. This, in particular, may be the case as to the Abbots of Lindores, Culrofs, and Pittenweem, who appear under those designations, 5th March 1542-3.

CHAPTER IV

I In drawing up the Catalogue, the following has been added
by a manuscript arrangement of the Duke of Devon, or
records of the Duke of Devon, it is hereby intended to
Lord Fitzmaurice, and his family in the reign of Charles
II. and was originally communicated by the Reverend J. C.
Clerk of the Duke of Devon.

The first manuscript arrangement of the Duke of Devon, is
that of his first appointment, and is of the year 1711, and
that of his second appointment, and is of the year 1712, and
the day of execution was the 11th of 1711.

It is probable, that the Duke of Devon, has been
the following, and is of the year 1711, and is of the year 1712,
by their ecclesiastical dignities, and is of the year 1711, and
may be the Duke of Devon, and is of the year 1711, and
the Duke of Devon, and is of the year 1711, and is of the year 1712.

A
CATALOGUE
OF
THE LORDS OF SESSION,

FROM THE INSTITUTION OF

THE COLLEGE OF JUSTICE,

IN THE YEAR 1532.

[In this Catalogue, *Extr.* stands for *Extraordinary Lord*; *f* for *superfeded*; *pr.* for *promoted*; *r* for *resigned*; and *d* for *dead*.]

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1532. May 25.	ALEXANDER MILNE, President.	Abbot of Cambuskenneth.	
_____	Mr Richard Bothwell. (1.)	Rector of Eskirk.	
_____	Mr John Dingwall.	Prov. of Trinity, Edinb.	
_____	Mr Henry Whyte. (2.)	Rector of Finevin.	
_____	Mr William Gibson.	Dean of Restalrig.	
_____	Mr Thomas Hay.	Dean of Dunbar.	
_____	Mr Robert Reid. *	Abbot of Kinloffe.	
_____	Mr George Ker.	Provost of Dunglafs.	
_____	Mr William Scott.	Balwerie.	

* In the original nomination, Mr Robert Chanwell and Mr Arthur Boyes were inserted. But the books of federunt bear, that in their absence the Abbot of Kinloffe, and the Provost of Dunglafs, were chosen and admitted by the King. It does not appear that Mr Robert Chanwell or Mr Arthur Boyes ever officiated.

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1532. May 25.	Sir John Campbell. (3.)	Lundie.	
_____	Sir James Colvill. (4.)	Easter Wemyss.	
_____	Mr Adam Otterburn.	Auldham.	
_____	Mr Nicol Crawford.	Oxengang.	
_____	Mr Francis Bothwell.	_____	
_____	Mr James Lawton.	_____	
1532. May 27.	Mr James Foulis. (5.)	Collington.	
1537. Nov. 7.	Walter Lindsey.	Lord St John.	
_____	Sir Thomas Erskine.	Brechin.	
_____	Mr Thomas Bannatyne.	_____	
_____	Mr Robert Galbraith. (6.)	Parson of Spot.	
1537. Nov. 13.	Mr Henry Sinclair. (7.)	Dean of Glasgow.	
1538. Nov. 14.	Mr Henry Balnays. (8.)	Hallhill.	
_____	Mr Thomas Scot.	Abbotshall.	
1538. Dec. 10.	Mr John Letham. (9.)	Rector of Killcraigh.	
1539. Feb. 16.	William Ruthven. <i>Extra</i>	Lord Ruthven.	
_____	John Erskine. <i>Extra</i>	Lord Erskine.	
_____	D. Brithman.	_____	
1539. March 2.	Mr Henry Lauder. (10.)	St Germain.	
1540. Nov. 19.	Mr John Sinclair. (11.)	Dean of Restalrig.	
_____	Mr William Lamb.	Rector of Conyeth.	
1541. July 2.	William Keith. <i>Extra</i>	Earl Marischal.	
_____	William Lesley. <i>Extra</i>	Earl of Rothes.	
_____	Mr George Durie.	Abbot of Dunfermline.	
_____	Mr Andrew Durie.	Abbot of Melrois.	
_____	Mr Donald Campbell.	Abbot of Cupar.	
_____	Mr Gavin Hamilton.	Abbot of Kilwinning.	

THE LORDS OF SESSION.

3

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1541. July 2.	Robert Maxwell. <i>Entr.</i>	Lord Maxwell.	
—	John Lindefay. <i>Entr.</i>	Lord Lindefay.	
1541. July 5.	Mr John Foulis.	Collington.	
1542. June 26.	Mr John Waddel.	Parson of Flisk.	
—	Dr John Gladstaines. (12.)	—	
1542. March 3.	Mr David Strachan.	—	
—	Mr John Hamilton.	Abbot of Paisley.	
—	—	Abbot of Lindores.	
—	—	Abbot of Culrois.	
—	—	Abbot of Pittenweem.	
—	George Seton. <i>Entr.</i>	Lord Seton.	
—	Alexander Levingston. <i>Entr.</i>	Lord Levingston.	
—	James Ogilvie. <i>Entr.</i>	Lord Ogilvie.	
—	Stewart. <i>Entr.</i>	Lord Innermeath.	
1543. Feb. 13.	ROBERT REID, President. (13.)	Bishop of Orkney.	Cambuskenneth.
—	Mr Thomas Wemyss.	—	
1547. July 4.	Sir Robert Carnegie. (14.)	Kinnaird.	
1547. March 19.	Mr George Hay.	Parson of Renfrew.	
1553. Jan. 20.	John Hamilton. (15.)	Archbp of St Andrew's.	
—	Mr George Durie.	Commend. Dunfermline.	
1554. Aug. 18.	Mr James Macgill.	Rankeillor Nether.	
1554. Nov. 13.	Mr Abraham Creighton.	Provost of Dunblane.	
—	Mr John Stevenfon.	Precentor of Glasgow.	
—	Mr William Baillic.	Provand.	
—	Mr James Scott.	Provost of Conforthine.	
—	Sir John Bellenden. (16.)	Auchinoul.	
—	Mr Thomas Marjoribanks.	Ratho.	

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1554. Nov. 13.	Sir Richard Maitland. <i>Entr.</i> (17.)	Lethington.	_____
_____	William Chisolme.	Bishop of Dunblane.	_____
_____	Sir William Hamilton.	Sanquhar.	_____
_____	Mr Adam Livingstone. <i>Entr.</i>	Dunnipace.	_____
1558. _____	HENRY SINCLAIR, Pref. (18.)	Bishop of Ross.	Bishop of Orkney <i>d.</i>
1560. Aug. 6.	Mr Archibald Dunbar. (19.)	Sub-Chant. Murray.	_____
1561. Nov. 12.	Sir Richard Maitland.	Lethington.	Sanquhar <i>d.</i>
_____	Mr John Spence.	Condie.	St Germans <i>d.</i>
_____	William Keith. <i>Entr.</i>	Earl Marischal.	Lethington <i>pr.</i>
_____	Mr William Maitland. <i>Entr.</i>	Lethington younger.	Dunnipace <i>d.</i>
_____	Mr James Balfour. <i>Entr.</i>	Parson of Flish.	Abbot of Dunfermline.
1562. Dec. 9.	Mr John Wood. <i>Entr.</i> (20.)	Tilliedavy.	_____
1562. Feb. 11.	Mr Henry Balnavis.	Hallhill.	Lundie <i>d.</i>
1563. Nov. 15.	Mr James Balfour.	Parson of Flish.	Cortorphine <i>d.</i>
1563. Jan. 14.	Mr John Leslie. (21.)	Parson of Oyne.	Chantor Glasgow <i>d.</i>
1563. Jan. 14.	Adam Bothwell. <i>Entr.</i> (22.)	Bishop of Orkney.	Flish <i>pr.</i>
1564. Dec. 14.	Mr Robert Maitland.	Dean of Aberdeen.	Bishop of Dunblane <i>d.</i>
1564. Jan. 26.	Mr David Chalmers. (23.)	Ormond.	Bishop of Ross <i>d.</i>
1565. Nov. 13.	Adam Bothwell.	Bishop of Orkney.	Provost of Dunblane <i>d.</i>
1565. Nov. 14.	JOHN SINCLAIR, President.	Bishop of Brechin.	Bishop of Ross <i>d.</i>
1565. Nov. 26.	Alexander Gordon. <i>Entr.</i>	Bishop of Galloway.	Bishop of Orkney <i>pr.</i>
1565. Jan. 12.	Sir William Maitland. (24.)	Lethington younger.	Kinnaird <i>d.</i>
1565. Jan. 12.	Dr Edward Henryson. <i>Entr.</i>	_____	Lethington younger <i>pr.</i>
1566. April 26.	Mr Archibald Crawford.	Parson of Eglishame.	Bishop of Brechin <i>d.</i>
1566. May 29.	Mr William Baillie.	P. Provand.	Bishop of Brechin <i>d.</i>
1566. June 12.	Mr John Wood. <i>Entr.</i> (25.)	Tilliedavy.	_____
1566. Nov. 12.	Mr Gavin Hamilton. <i>Entr.</i>	Commendator Kilwinning	_____

THE LORDS OF SESSION.

5

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1567. Nov. 19.	Sir John Wisheart. <i>Entr.</i>	Pittarrow.	Dr Henryson <i>f.</i>
1567. Dec. 6.	Sir JAMES BALFOUR, Prof. (26.)	Pittendricht.	Provand <i>f.</i>
1568. June 2.	Mr Robert Pitcairne.	Commend. Danfermline.	Ormond <i>f.</i>
1568. June 2.	John Maitland. (27.)	Commend. Coldinghame.	Eglisshame <i>f.</i>
1568. June 2.	Mr Archibald Douglas.	Parson of Douglas.	Bishop of Ross <i>f.</i>
1569. April 20.	Mark Kerr. <i>Entr.</i> (28.)	Commend. Newbottle.	Bishop of Galloway <i>f.</i>
1570. Sept. 30.	John Lion. <i>Entr.</i>	Lord Glamis.	_____
1570. Oct. 20.	Mr Thomas Macallyean.	Cliftonhall.	Hallhill <i>d.</i>
1573. Oct. 20.	Mr David Borthwick.	Lochill.	Condie <i>d.</i>
1573. Oct. 24.	Robert Boyd. <i>Entr.</i>	Lord Boyd.	Glamis <i>pr.</i>
1573. Jan. 18.	Sir John Wisheart. <i>Entr.</i>	Pittarrow.	E. Marischal.
1575. July 9.	Mr James Meldrum.	Segie.	Lauder <i>r.</i>
1575. Oct. 20.	Mr Robert Pont. (29.)	Pr. of Trinity College.	_____
1575. Oct. 21.	Mr William Douglas.	Whittinghame.	_____
1575. Oct. 26.	Mr Alexander Colvil.	Abbot of Culrofs.	_____
1575. Nov. 21.	Mr Henry _____ <i>Entr.</i>	Commend. Balmerino.	_____
1575. Jan. 11.	Mr Patrick Vanse. (30.)	Barnbarrow.	Dean of Aberdeen <i>f.</i>
1577. April 20.	Mr Thomas Bellenden.	Newtyle.	Auchinoul <i>d.</i>
1578. May 8.	Patrick Gray. <i>Entr.</i>	Master of Gray.	Boyd <i>f.</i>
1578. Oct. 25.	Robert Boyd. <i>Entr.</i> (31.)	Lord Boyd.	Master of Gray <i>f.</i>
1578. Nov. 11.	Mr Archibald Douglas.	Parson of Glasgow.	_____
1578. Nov. 25.	William Ruthven. <i>Entr.</i>	Lord Ruthven.	Pittarrow.
1579. Aug. 15.	Mr Alexander Hay.	Easter Kennet.	Rankellor <i>d.</i>
1580. Feb. 1.	Mr Robert Creighton.	Elliock.	Lochill <i>d.</i>
1581. April 26.	Mr John Maitland. (32.)	Thirlestane.	Parson of Glasgow <i>f.</i>
1581. July 5.	Mr John Lindfay.	Parson of Meamure.	Cliftonhall <i>d.</i>
1582. June 27.	Mr David Macgill. (33.)	Nisbet.	Elliock <i>d.</i>

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1583. Dec. 10.	James Stewart. <i>Extr.</i>	Earl of Arran.	Boyd <i>r.</i>
1583. Jan. 23.	James Stewart. <i>Extr.</i>	Lord Down.	Commend. Balmerino <i>r.</i>
1584. May 12.	John Graham. <i>Extr.</i>	Earl of Montrose.	Gowrie <i>d.</i>
1584. May 23.	Mr John Graham. (34.)	Hallyards.	Robert Pont <i>r.</i>
1584. July 17.	Sir Lewis Bellenden.	Auchinoul. (35.)	Lethington senior <i>r.</i>
1584. Nov. 12.	Patrick Gray. <i>Extr.</i>	Lord Gray.	Arran <i>pr.</i>
1584. Nov. 12.	Mr Mark Ker. <i>Extr.</i>	Com. Newbottle. (36.)	Newbottle <i>d.</i>
1584. Nov. 24.	Mr John Bartane.	Dean of Dunkeld.	Com. Dunfermline.
1585. Jan. 27.	Mr Alexander Seton. <i>Extr.</i>	Prior of Pluscarden.	Down.
1585. Feb. 9.	Mr Thomas Lyon. <i>Extr.</i>	Balduckie.	Montrose <i>r.</i>
1586. June 21.	Robert Boyd. <i>Extr.</i>	Lord Boyd.	Gray <i>f.</i>
1586. July 21.	Mr David Chalmers.	Ormond.	D. Dunkeld <i>f.</i>
1586. March 4.	Mr James Elphinstone.	Innernochtie.	Thirlestane <i>r.</i>
1587. June 2.	Mr John Colvil.	Chantor of Glasgow.	Commend. Culrofs <i>r.</i>
1587. June 21.	Mr Alexander Colvil.	Commend. of Culrofs.	Chantor of Glasgow <i>r.</i>
1587. Aug. 14.	Mr William Melvill.	Commend. of Tongland.	Dean of Moray <i>r.</i>
1587. Feb. 16.	Alexander Seton.	Lord Urquhart.	Segie <i>d.</i>
1587. Feb. 17.	Sir John Seton. <i>Extr.</i>	Barnes.	Urquhart <i>pr.</i>
1588. July 4.	Mr John Cockburne. <i>Extr.</i>	Ormistoune.	Boyd <i>r.</i>
1590. Aug. 8.	Mr Archibald Douglas.	Whittinghame younger.	Whittinghame <i>r.</i>
1591. Aug. 14.	Mr Thomas Bellenden.	Newtyle.	Newtyle <i>d.</i>
1591. Nov. 6.	John Graham. <i>Extr.</i>	Earl of Montrose.	Balduckie <i>f.</i>
1591. Nov. 11.	Mr Richard Cockburne.	Clerkintoun.	Auchinoul <i>d.</i>
1591. Nov. 26.	Mr Andrew Wemyss. (37.)	Myrecairnie.	Newtyle <i>d.</i>
1592. Nov. 9.	Mr Thomas Hamilton.	Drumcairne.	Ormond <i>d.</i>
1592. Feb. 15.	Sir John Cockburne. (38.)	Ormistoune.	Hallyards <i>d.</i>
1592. March 8.	Sir Thomas Lyon. <i>Extr.</i>	Auldbar.	Ormistoune <i>pr.</i>

THE LORDS OF SESSION.

7

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1593. March 28.	Sir Thomas Lyon.	Auldbar.	Provand <i>d.</i>
1593. May 28.	Mr Walter Stewart. <i>Extr.</i>	Commendator Blantyre.	Auldbar <i>pr.</i>
1593. May 28.	ALEXANDER SETON, President.	Lord Urquhart.	Provand <i>d.</i>
1593. July 2.	Mr John Bothwell.	Com. Holyroodhouse.	Bishop of Orkney <i>r.</i>
1594. June 11.	Sir Robert Melvill. <i>Extr.</i>	Mordocairnie.	Barnes <i>d.</i>
1594. Nov. 30.	Mr John Skene. (39.)	Curriehill.	Easter Kennet <i>d.</i>
1594. March 12.	Mr John Preston. (40.)	Fenton-barns.	Cranston-Riddel <i>d.</i>
1596. May 19.	Peter Rollock. <i>Extr.</i>	Bishop of Dunkeld.	E. Montrose <i>r.</i>
1597. May 28.	Mr David Macgill. (41.)	Cranston-Riddel.	Commend. Culrofs <i>d.</i>
1597. Dec. 2.	Mr Edward Bruce.	Kinlofs.	Barnbarrow <i>d.</i>
1597. Feb. 23.	Sir David Lindsay.	Edzell.	Menmure <i>r.</i>
1599. May 17.	Alexander Elphinstone. <i>Extr.</i>	Master of Elphinstone.	Commend. Blantyre <i>f.</i>
1601. Feb. 26.	Sir Robert Melvill. <i>Extr.</i>	Bruntisland.	Mordocairnie <i>r.</i>
1604. Feb. 25.	Mr Alexander Hay.	Fosterfeat.	Kinlofs <i>r.</i>
_____	Sir James Wemyss.	Bogie. (42.)	_____
_____	Sir Lewis Craig.	Wrights-lands.	_____
_____	Sir John Wemyss.	Craigtown.	_____
1605. March 1.	JAMES ELPHINSTONE, President.	Lord Balmerino.	E. Dunfermline <i>pr.</i>
1607. May 29.	Mr Thomas Hamilton. (43.)	Prestonfield.	Cranston-Riddel <i>d.</i>
1608. May 17.	Sir Alex. Drummond. <i>Extr.</i> (44.)	Medhope.	Bruntisland <i>f.</i>
1608. June 30.	Sir Andrew Hamilton.	Redhouse.	Prestonfield <i>r.</i>
1609. June 6.	Mr JOHN PRESTON, President *.	Fenton-barns.	Balmerino <i>pr.</i>
1609. June 6.	Sir William Livingston.	Kilfyth.	Fenton-barns <i>pr.</i>
1610. Jan. 13.	Walter Stewart. <i>Extr.</i>	Lord Blantyre.	Lord Elphinstone <i>f.</i>
1610. Jan. 13.	Alexander Livingston. <i>Extr.</i>	Master of Livingston.	_____
1610. Jan. 13.	Sir Robert Melvill. <i>Extr.</i>	Bruntisland.	Medhope <i>f.</i>
1610. Jan. 30.	John Spottiswoode. <i>Extr.</i>	Archbishop of Glasgow.	E. Lowthian <i>d.</i>

(Add. Note. * This Gentleman's father is marked Baxter of Edinburgh, Birth-brief Register, Vol. 10. Page 171.)

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1610. Feb. 3.	Sir Alexander Hay.	Newton.	Holyroodhouse <i>d.</i>
1610. May 16.	Mr Peter Rollock. <i>Extr.</i>	Piltoun, (45.)	
1611. Jan. 16.	Mr William Oliphant.	Newton.	Edzell <i>d.</i>
1612. June 12.	Sir James Skene.	Curriehill.	Curriehill <i>r.</i>
1613. Nov. 2.	Sir Gideon Murray. (46.)	Elibank,	Tongland.
1616. June 15.	THOMAS HAMILTON, Pref. (47.)	Lord Binning.	Fenton-barns <i>d.</i>
1616. July 5.	David Carnegie.	Lord Carnegie.	Fenton-barns <i>d.</i>
1617. March 15.	Sir George Ereskine. (48.)	Innerteil.	Bogie <i>d.</i>
1618. June 5.	John Maitland.	Viscount of Lauderdale.	Whittinghame <i>r.</i>
1620. Feb. 1.	John Ereskine. <i>Extr.</i>	Lord Ereskine.	Piltoun <i>r.</i>
1621. July 10.	Sir Alexander Gibson. (49.)	Durie.	Elibank <i>d.</i>
1622. June 6.	Mr Thomas Henderfon.	Chesters.	Wrights-lands <i>d.</i>
1622. July 12.	Sir Ro. Spottiswoode. <i>Extr.</i> (50.)	New-Abbey.	Archbp St Andrew's <i>r.</i>
1622. July 27.	Sir John Hamilton. (51.)	Magdalens.	
1623. Nov. 25.	Sir Archibald Napier. (52.)	Merchistoun.	Ormistoun <i>d.</i>
1623. Dec. 18.	Sir Andrew Fletcher.	Innerpeffer.	Craigtoun <i>d.</i>
1626. Feb. 14.	Sir JAMES SKENE, President.	Curriehill.	Melros <i>pr.</i>
1626. Feb. 14.	Sir Robert Spottiswoode.	New-Abbey.	Curriehill <i>pr.</i>
1626. Feb. 14.	Mr Alexander Seton.	Kilcreuch.	Merchistoun <i>f.</i>
1626. Feb. 14.	Sir George Auchinleck. (53.)	Balmanno.	Lauderdale <i>f.</i>
1626. Feb. 14.	Sir Alexander Napier.	Laurieston.	Lord Carnegie <i>f.</i>
1626. Feb. 14.	Sir Archibald Acheson. (54.)	Gleacairnie.	Clerkington <i>f.</i>
1626. Feb. 14.	Mr James Bannatyne.	Newhall.	Magdalens <i>f.</i>
1626. Feb. 14.	Mr Alexander Morrison.	Prestongrange.	Newton <i>f.</i>
1626. Feb. 15.	Sir Archibald Napier. <i>Extr.</i>	Merchistoun.	
1626. Feb. 15.	David Carnegie. <i>Extr.</i>	Lord Carnegie.	
1626. June 1.	John Maitland. <i>Extr.</i>	E. Lauderdale.	
1626. July 2.	Patrick Maxwell. <i>Extr.</i>	Bishop of Ross.	

THE LORDS OF SESSION.

9

<i>Date.</i>	<i>Name.</i>	<i>Tith.</i>	<i>Predecessor.</i>
1627. Nov. 8.	Sir James Learmonth.	Balcomie.	Glencairnie <i>r.</i>
1627. Nov. 8.	Mr George Haliburton.	Eodderance.	Killyth <i>d.</i>
1628. June 18.	John Ereskine. <i>Extr.</i> (55.)	Lord Ereskine.	Bishop of Ross <i>f.</i>
1628. Nov. 4.	Sir Archibald Acheson. <i>Extr.</i>	Glencairnie.	Lord Napier <i>f.</i>
1628. Nov. 8.	William Graham. <i>Extr.</i>	Earl of Monteith.	E. Lauderdale <i>f.</i>
1628. Nov. 8.	Sir Andrew Ker. <i>Extr.</i>	Master of Jedburgh.	Lord Carnegie <i>f.</i>
1629. Jan. 14.	Sir John Scot. <i>Extr.</i> (56.)	Scotstarvet.	Master of Jedburgh <i>d.</i>
1629. Nov. 3.	Sir James Oliphant.	Newton.	Forrester-seat <i>r.</i>
1629. Nov. 3.	Sir James Macgill.	Cranston-Riddel.	Laurieston <i>d.</i>
1630. Nov. 2.	Sir John Hamilton. <i>Extr.</i>	Magdalens.	Scotstarvet <i>f.</i>
1630. Nov. 10.	John Stewart. <i>Extr.</i>	Earl of Traquair.	Lord Ereskine <i>f.</i>
1631. July 28.	William Alexander. <i>Extr.</i>	Viscount of Stirling.	Glencairnie <i>f.</i>
1632. July 27.	Sir John Hope.	Craighall.	Newton <i>r.</i>
1632. July 28.	Sir John Scot.	Scotstarvet.	Prestongrange <i>d.</i>
1633. Jan. 8.	Sir John Hay. <i>Extr.</i>	Barro.	Magdalens <i>d.</i>
1633. Nov. 1.	Sir ROBERT SPOTTISWOODE, Pref.	New-Abbey.	Curriehill <i>d.</i>
1633. Dec. 4.	John Maxwell. <i>Extr.</i>	Bishop of Ross.	E. of Monteith <i>f.</i>
1634. Jan. 7.	Sir John Hay.	Barro.	Curriehill <i>d.</i>
1634. Jan. 14.	Archibald Campbell. <i>Extr.</i>	Lord Lorne.	Barro <i>pr.</i>
1635. Jan. 27.	William Alexander. <i>Extr.</i>	Lord Alexander.	E. Stirling <i>pr.</i>
1636. Nov. 1.	Mr Patrick Nisbet.	Eastbank.	Newhall <i>d.</i>
1637. Jan. 10.	Sir John Hamilton.	Orbiefton.	Chefters <i>r.</i>
1637. March 1.	Sir William Elphinston.		Redhouse <i>d.</i>
1637. June 6.	Mr Adam Cunninghame.	Woodhall.	Kilcreuch <i>r.</i>
1639. Feb. 9.	Archibald Douglas. <i>Extr.</i>	Lord Angus.	Lord Alexander <i>d.</i>
1639. March 6.	Sir James Carmichael.	Carmichael.	Balmanno <i>d.</i>
1639. July 9.	Sir Alexander Falconer.	Halkertoun.	Woodhall <i>d.</i>

A CATALOGUE OF

New Commission by Act of Parliament, 13th November 1641.

N. B. Those marked *N.* had not formerly served.

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor</i>
	Sir George Ereskine.	Innerteil.	
	Sir Alexander Gibfon.	Durie.	
	Sir Andrew Fletcher.	Innerpeffer.	
	Sir John Hamilton.	Orbieftoun.	
	Sir James Carmichael.	Carmichael.	
	Sir James Learmonth.	Balcomie.	
	Sir James Macgill.	Cranston-Riddel.	
	Sir George Haliburton.	Fodderance.	
	Sir John Hope.	Craighall.	
	Sir John Scott.	Scottstarvet.	
	Sir Alexander Falconer.	Halkertoun.	
<i>N.</i>	Sir John Leslie.	Newton.	
<i>N.</i>	Sir Thomas Hope.	Kerfe.	
<i>N.</i>	Sir Archibald Johnston.	Warrifton.	
<i>N.</i>	Sir Adam Hepburn.	Humbie.	
	Archibald Campbell. <i>Extr.</i>	Earl of Argyle.	
	Archibald Douglas. <i>Extr.</i>	Lord Angus.	
<i>N.</i>	John Lindsay. <i>Extr.</i> (57.)	Lord Lindsay.	
<i>N.</i>	John Elphinstone. <i>Extr.</i>	Lord Balmerino.	
1646. July 2.	Sir Alexander Gibfon.	Durie.	Innerteil <i>d.</i>
1646. July 2.	Sir James Lockhart.	Lee.	Durie elder <i>d.</i>
1646. July 2.	Sir Alexander Belfches.	Tofts.	Kerfe <i>d.</i>
1649. June 1.	Sir James Hope. (58.)	Hopetoun.	

THE LORDS OF SESSION.

11

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1649. June 1.	Mr Robert Bruce.	Broomhall.	_____
1649. June 1.	Mr Alexander Pearson.	South-hall.	_____
1649. June 1.	Mr Robert Macgill.	Ford.	_____
1649. June 7.	John Elphinstone. <i>Extr.</i>	Lord Coupar.	Balmerino <i>d.</i>
1649. June 8.	Sir William Scot.	Clerkingtoun.	_____
1649. June 22.	Mr George Winram.	Libbertoun.	_____
1649. July 3.	John Kennedy. <i>Extr.</i>	Earl of Caffilis.	Crawfurd <i>f.</i>
1649. Nov. 1.	Mr Alexander Brodie.	Brodie.	_____
1649. Nov. 1.	Mr John Dickson.	Hartree.	Fodderance <i>d.</i>
_____	Sir Hew Campbell.	Cefnock.	_____

Commissioners for Administration of Justice to the People of Scotland.

Appointed by Oliver Cromwell.

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1654. Nov. 1.	George Smyth, Esq; (59.)	_____	_____
_____	William Laurence, Esq;	_____	_____
_____	Edward Mofely, Esq;	_____	_____
1655. Jan. 1.	Mr John Swinton. (60.)	Swinton.	_____
_____	Mr Alexander Pearson.	South-hall.	_____
1655. Nov. 7.	Sir James Lermonth.	Balcomie.	_____
1655. Nov. 7.	Mr Andrew Ker. (61.)	_____	_____
1656. Jan. 4.	Sir William Lockhart.	_____	_____
1657. July 1.	Mr James Dalrymple. (62.)	Stair.	Balcomie <i>d.</i>
1657. Nov. 3.	Sir Archibald Johnstone. (63.)	Warriston.	_____
1657. Dec. 3.	Alexander Brodie.	Brodie.	_____

A CATALOGUE OF RESTORATION.

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1661. June 1.	Sir JOHN GILMOUR, Pref. (64.)	Craigmillar.	
_____	Alexander Falconer.	Lord Halkertoun.	
_____	Sir Archibald Primrose.	Carrington.	
_____	Sir Robert Murray. (65.)	Lord Justice-Clerk.	
_____	Sir James Macgill.	Cranston.	
_____	Sir James Lockhart.	Lee.	
_____	Sir George Mackenzie. (66.)	Tarbet.	
_____	Sir Archibald Stirling.	Carden.	
_____	Sir James Foulis.	Collington.	
_____	Sir James Dalrymple.	Stair.	
_____	Sir Robert Nairne. (67.)	Strathurd.	
_____	Mr Robert Burnet. (68.)	Crimond.	
_____	Mr James Robertson. (69.)	Bedlay.	
_____	Mr John Scougal. (70.)	Whytekirk.	
_____	Mr Andrew Ayton.	Kinglassie.	
_____	John Lindefay. <i>Extr.</i>	Earl of Crawford.	
_____	John Lesley. <i>Extr.</i>	Earl of Rothes.	
_____	John Maitland. <i>Extr.</i>	Earl of Lauderdale.	
_____	John Kennedy. <i>Extr.</i>	Earl of Caillie.	
1661. June 25.	Sir David Nevoy. (71.)	Nevoy.	Cranston <i>r.</i>
1662. June 4.	Sir James Dundas. (72.)	Arniston.	Crimond <i>d.</i>
1662. July 15.	John Middleton. <i>Extr.</i>	Earl of Middleton.	Caillie <i>f.</i>
1663. June 18.	Mr John Home.	Renton.	Sir R. Murray <i>r.</i>
1664. June 2.	John Hay. <i>Extr.</i>	Earl of Tweeddale.	Crawford <i>r.</i>

THE LORDS OF SESSION.

13

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1664. Nov. 4.	Alexander Burnet. <i>Extr.</i>	Archbishop of Glasgow.	Middleton <i>r.</i>
1664. Nov. 4.	Sir John Nisbet. (73.)	Dirleton.	Bedlay <i>d.</i>
1664. Nov. 4.	Sir John Baird.	Newbyth.	Tarbet <i>f.</i>
1665. Nov. 22.	Sir John Lockhart.	Castlehill.	Arniston <i>r.</i>
1667. July 10.	Alexander Bruce. <i>Extr.</i>	Earl of Kincardine.	Roths <i>pr.</i>
1668. June 25.	James Graham. <i>Extr.</i> (74.)	Marquis of Montrose.	Archbp of Glasgow <i>f.</i>
1668. July 17.	Sir Peter Wedderburn. (75.)	Gosfoord.	Carden <i>d.</i>
1669. Nov. 2.	John Seton. <i>Extr.</i>	Earl of Dunfermline.	Montrose <i>d.</i>
1669. Nov. 2.	Mr Charles Maitland. (76.)	Halton.	Kinglassie <i>d.</i>
1671. Jan. 17.	Sir JAMES DALRYMPLE, Pref.	Stair.	Craigmillar <i>r.</i>
1671. Jan. 21.	Sir Thomas Wallace.	Craigie.	Stair <i>pr.</i>
1671. Nov. 23.	Sir Andrew Ramfay.	Abbotshall.	Halkertoun <i>d.</i>
1671. Nov. 23.	Sir Richard Maitland.	Pittrichie.	Renton <i>d.</i>
1672. March 4.	Sir Robert Preston.	Preston.	Whytekirk <i>d.</i>
1673. Jan. 14.	John Murray. <i>Extr.</i>	Earl of Athole.	Dunfermline <i>d.</i>
1674. June 14.	Sir David Balfour.	Forret.	Abbotshall <i>f.</i>
1674. June 14.	Sir Thomas Murray. (77.)	Glendoick.	Lee <i>d.</i>
1674. July 11.	Archibald Campbell. <i>Extr.</i> (78.)	Earl of Argyle.	Tweeddale <i>f.</i>
1674. Nov. 27.	Sir James Foulis.	Reidfurd.	Preston <i>d.</i>
1676. June 11.	Sir David Falconer.	Newton.	Carrington <i>pr.</i>
1677. Nov. 13.	Sir Alexander Seton. (79.)	Pitmedden.	Pittrichie <i>d.</i>
1677. Nov. 13.	Sir Roger Hogg.	Harcarse.	Dirleton <i>r.</i>
1679. Nov. 28.	Sir Andrew Birnie.	Saline.	Gosfoord <i>d.</i>
1680. June 1.	Sir George Gordon.	Haddo.	Craigie <i>d.</i>
1680. Nov. 19.	Alexander Stewart. <i>Extr.</i>	Earl of Moray.	Kincardine <i>d.</i>
1681. Nov. 1.	Sir GEORGE GORDON, Pref. (80.)	Haddo.	Stair <i>f.</i>
1681. Nov. 1.	Sir George Mackenzie.	Tarbet.	Glendoick <i>f.</i>

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1681. Nov. 1.	Sir Patrick Ogilvie.	Boyne.	Newbyth <i>f.</i>
1681. Nov. 1.	Mr John Murray.	Drumcairne.	Haddo <i>pr.</i>
1681. Nov. 1.	William Douglas. <i>Extr.</i>	Earl of Queensberry.	Argyle <i>f.</i>
1682. July 5.	Sir DAVID FALCONER, Pref. (81).	Newton.	Haddo <i>pr.</i>
1682. July 5.	Sir George Nicolson. (82.)	Kemnay.	Newton <i>pr.</i>
1682. Nov. 14.	Mr John Wauchope.	Edmonstone.	Halton <i>f.</i>
1682. Nov. 16.	James Drummond. <i>Extr.</i>	Earl of Perth.	Lauderdale <i>d.</i>
1683. Nov. 1.	Sir Thomas Stewart.	Blair.	Nevoy <i>d.</i>
1683. Nov. 2.	Sir Patrick Lyon. (83.)	Carfe.	Strathurd <i>d.</i>
1684. July 15.	Charles Middleton. <i>Extr.</i>	Earl of Middleton.	Perth <i>pr.</i>
1685. Dec. 28.	Sir GEORGE LOCKHART, Pr. (84.)	Carnwath.	Newton <i>d.</i>
1686. March 26.	Patrick Lyon. <i>Extr.</i>	Earl of Strathmore.	Middleton <i>pr.</i>
1686. ———	William Hamilton. <i>Extr.</i> (85.)	Duke of Hamilton.	Queensberry <i>f.</i>
1687. Feb. 11.	Mr Alexander Malcolme.	Lochore.	Pitmedden <i>f.</i>
1688. Feb. 23.	Sir John Dalrymple.	Stair.	Collington <i>d.</i>
1688. June 19.	Mr Alexander Swinton. (86.)	Merfington.	Harcarfe <i>f.</i>
1688. June 23.	Mr Lewis Gordon.	Auchintoul.	Edmonstone <i>f.</i>

R E V O L U T I O N .

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1689. Nov. 1.	Sir JAMES DALRYMPLE, Pref.	Stair.	
—————	Sir John Baird.	Newbyth.	
—————	Mr Alexander Swinton.	Merfington.	
—————	Sir Colin Campbell.	Aberuchill.	
—————	James Murray.	Philiphaugh.	
—————	James Dundas.	Arncliffe.	

THE LORDS OF SESSION.

15

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1689. Nov. 1.	Mr John Hamilton.	Halcraig.	
_____	Mr David Home.	Crocerig.	
_____	Sir John Maitland. (87.)	Ravelrig.	
_____	Sir Robert Sinclair.	Stevenfon.	
_____	Sir John Lauder.	Fountainhall.	
_____	William Anstruther.	Anstruther.	
_____	Mr Archibald Hope.	Rankeillor.	
_____	Mr James Falconer.	Phefdo.	
_____	Robert Hamilton.	Prefmennan.	
1693. Nov. 23.	William Douglas. <i>Extr.</i>	Duke of Queensberry.	
_____	William Johnstone. <i>Extr.</i>	Earl of Annandale.	
1693. Nov. 28.	Patrick Hume. <i>Extr.</i> (88.)	Lord Polwarth.	
1693. Dec. 19.	William Hamilton. <i>Extr.</i>	Duke of Hamilton.	
1693. Dec. 29.	Sir William Hamilton.	Whitelaw.	Stevenfon <i>r.</i>
1694. Dec. 14.	Archibald Campbell. <i>Extr.</i>	Earl of Argyle.	D. Hamilton <i>d.</i>
1696. June 9.	Mr James Scougal.	Whitehill.	Prefmennan <i>d.</i>
1696. June 26.	James Douglas. <i>Extr.</i>	Duke of Queensberry.	D. Queensberry <i>d.</i>
1698. June 7.	Mr HENRY DALRYMPLE, Pref.	Northberwick.	Stair <i>d.</i>
1699. Feb. 7.	Hugh Campbell. <i>Extr.</i>	Earl of Loudon.	Marchmont <i>pr.</i>
1699. Feb. 17.	Sir John Maxwell.	Pollock.	Newbyth <i>d.</i>
1701. July 25.	Mr Robert Stewart.	Tillicutrie.	Merfington <i>d.</i>
1703. Jan. 12.	Mr Roderick Mackenzie.	Prestonhall.	Whitehill <i>d.</i>
1704. June 20.	John Campbell. <i>Extr.</i>	Duke of Argyle.	D. Argyle <i>d.</i>
1704. Nov. 7.	Sir Alexander Campbell. (89.)	Cesnock.	Aberuchill <i>d.</i>
1705. Jan. 31.	Adam Cockburn.	Ormistoun.	Whitelaw <i>d.</i>
1705. June 28.	Sir Gilbert Elliot.	Minto.	Phefdo <i>d.</i>
1705. July 23.	Sir Alexander Ogilvy.	Forglen.	Halcraig <i>d.</i>

A CATALOGUE OF

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1707. March 18.	Mr James Ereskine.	Grange.	Rankeillor <i>d.</i>
1707. June 7.	Mr John Murray.	Bowhill.	Crocerig <i>d.</i>
1708. June 1.	Archibald Campbell. <i>Extr.</i>	Earl of Hay.	D. Argyle <i>r.</i>
1709. June 7.	Mr Dougal Stewart.	Blairhall.	Tillicutrie <i>r.</i>
1709. June 10.	Sir Francis Grant.	Cullen.	Philiphaugh <i>d.</i>
1710. June 7.	Sir James Mackenzie.	Roylton.	Prestonhall <i>r.</i>
1710. Nov. 8.	Mr David Ereskine.	Dun.	Lauderdale <i>d.</i>
1711. Nov. 6.	Sir William Calderwood.	Polton.	Anstruther <i>d.</i>
1712. Nov. 7.	John Murray. <i>Extr.</i>	Duke of Athole.	Queensberry <i>d.</i>
1712. Nov. 8.	Mr James Hamilton.	Pencaitland.	Blairhall <i>d.</i>
1714. June 5.	Mr James Elphinston. (90.)	Coupar.	Bowhill <i>d.</i>
1714. Nov. 23.	Sir Andrew Hume.	Kimmerghame.	Cefnock <i>r.</i>
1718. June 6.	Sir Walter Pringle.	Newhall.	Minto <i>d.</i>
1721. March 7.	John Hay. <i>Extr.</i>	Marquis of Tweeddale.	Annandale <i>d.</i>
1724. June 4.	Mr Andrew Fletcher.	Milton.	Fountainhall <i>d.</i>
1726. June 4.	Sir Gilbert Elliot.	Minto. Justice-Clerk.	Cullen <i>d.</i>
1726. Dec. 29.	Mr Hew Dalrymple.	Drummore.	Arniston <i>d.</i>
1727. June 10.	Mr Patrick Campbell.	Monzie.	Forglen <i>d.</i>
1729. July 1.	Mr John Pringle.	Haining.	Pencaitland <i>d.</i>
1730. June 5.	Mr Alexander Fraser.	Strichen.	Kimmerghame <i>d.</i>
1732. Nov. 3.	Mr Patrick Grant.	Elchies.	Pollock <i>d.</i>
1733. Nov. 3.	Mr John Sinclair.	Murkle.	Polton <i>d.</i>
1734. July 11.	Alexander Lesley.	Earl of Leven.	Grange <i>r.</i>
1735. Nov. 7.	Sir James Fergusson.	Kilkerran.	Ormistoun <i>d.</i>
1737. June 10.	Mr Robert Dundas.	Arniston.	Newhall <i>d.</i>
1737. June 21.	Mr DUNCAN FORBES, President.	Culloden.	Northberwick <i>d.</i>
1744. Nov. 23.	Mr Charles Ereskine.	Tinwald.	Roylton <i>d.</i>

THE LORDS OF SESSION.

17

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1746. Dec. 19.	Mr Patrick Boyle.	Shewalton.	Balmerino <i>d.</i>
1748. Sept. 16.	Mr ROBERT DUNDAS, President.	Arniston.	Cullochen <i>d.</i>
1749. June 3.	Mr James Grahame.	Easdale.	Arniston <i>pr.</i>
1751. Feb. 26.	Mr George Sinclair.	Woodhall.	Easdale <i>d.</i>
1752. Feb. 6.	Mr Henry Home.	Kaims.	Monzie <i>d.</i>
1754. Feb. 2.	Mr ROBERT CRAIGIE, President.	Glendoick.	Arniston <i>d.</i>
1754. Feb. 15.	Mr Alexander Boswell.	Auchinleck.	Dun <i>r.</i>
1754. Nov. 14.	Mr William Grant.	Prestongrange.	Elchies <i>d.</i>
1754. Nov. 20.	Mr Robert Pringle.	Edgefield.	Leven <i>d.</i>
1754. Nov. 28.	Mr Thomas Hay.	Huntington.	Haining <i>d.</i>
1755. July 5.	Mr Andrew Macdowal.	Bankton.	Murkle <i>d.</i>
1755. July 24.	Mr Peter Wedderburn.	Chesterhall.	Huntington <i>d.</i>
1755. July 31.	Mr George Carre.	Nisbet.	Drummore <i>d.</i>
1756. Dec. 18.	Mr George Brown.	Coalfoun.	Chesterhall <i>d.</i>
1759. June 14.	Mr Andrew Pringle.	Alemore.	Kilkerran <i>d.</i>
1760. June 14.	Mr ROBERT DUNDAS, President.	Arniston.	Glendoick <i>d.</i>
1761. March 6.	Mr James Veitch.	Elliock.	Bankton <i>d.</i>
1761. June 18.	Mr James Ereskine.	Barjarg. Alva.	Shewalton <i>d.</i>
1762. June 16.	Mr John Campbell.	Stonefield.	Tinwald <i>d.</i>
1764. June 14.	Mr James Ferguson.	Pitfour.	Edgefield <i>d.</i>
1764. July 3.	Mr Francis Garden.	Gardenfoun.	Woodhall <i>d.</i>
1764. July 4.	Mr Robert Bruce.	Kennet.	Prestongrange <i>d.</i>
1766. March 6.	Sir David Dalrymple.	Hailes.	Nisbet <i>d.</i>
1766. June 14.	Mr Thomas Miller.	Barskimming. Justice-Clerk.	Minto <i>d.</i>
1767. Feb. 12.	Mr James Burnett.	Monboddie.	Milton <i>d.</i>
1775. March 10.	Mr Alexander Lockhart.	Covington.	Strichen <i>d.</i>
1776. Feb. 22.	Mr David Ross.	Ankerville.	Alemore <i>d.</i>

A CATALOGUE.

<i>Date.</i>	<i>Name.</i>	<i>Title.</i>	<i>Predecessor.</i>
1776, Dec. 13.	Mr Robert Macqueen.	Braxfield. Justice-Clerk.	Coalston <i>d.</i>
1777. July 10.	Mr David Dalrymple.	Westhall.	Pitfour <i>d.</i>
1782. Nov. 14.	Mr David Rae.	Elkgrove.	Auchinleck <i>d.</i>
1782. Dec. 21.	Mr John Swinton.	Swinton.	Covington <i>d.</i>
1783. March 6.	Mr Alexander Murray.	Henderland.	Kaimes <i>d.</i>
1784. July 1.	Hon. Mr Alexander Gordon.	Rockville.	Westhall <i>d.</i>
1786. March 4.	Mr William Nairne.	Dunfinnan.	Kennet <i>d.</i>
1788. Jan. 15.	Sir THOMAS MILLER, President.	Glenlee.	Arniston <i>d.</i>
1789. Jan. 17.	Mr John MacLaurin.	Dreghorn.	Glenlee <i>pr.</i>
1789. Nov. 12.	Mr ILAY CAMPBELL, President.	Succoth.	Glenlee <i>d.</i>
1792. June 7.	Mr Alexander Abercromby.	Abercromby.	Rockville <i>d.</i>
1792. Dec. 21.	Mr William Craig.	Craig.	Hailes <i>d.</i>
1793. Nov. 14.	Mr William Baillie.	Polkemmet.	Elliock <i>d.</i>
1793. Nov. 15.	Mr David Smyth.	Methven.	Gardenstone <i>d.</i>
1795. May 23.	Sir William Miller.	Glenlee.	Henderland <i>d.</i>
1796. March 11.	Mr Allan Maconochie.	Meadowbank.	Abercrombie <i>d.</i>
1796. Nov. 18.	Mr Robert Cullen.	Cullen.	Barjarg. (Alva) <i>d.</i>
1797. Feb. 7.	Mr William Honyman.	Armadaic.	Dreghorn <i>d.</i>
1799. May 16.	Mr William M'Leod Bannatyne.	Bannatyne.	Swinton <i>d.</i>
1799. June 21.	Mr Claud Irvine Boswell.	Balmuto.	Monboddo <i>d.</i>
1799. July 11.	Mr George Fergusson.	Hermand.	Braxfield <i>d.</i>



NOTES

ON

THE CATALOGUE OF THE LORDS OF SESSION.

Note 1. *Mr Richard Bothwell, Rector of Eskirk.*

March 7. 1539. The King dispenses with his attendance, he being aged; but reserves to him his salary and privileges.

Note 2. *Mr Henry Whyte, Rector of Finevin.*

February 16. 1539. The King dispenses with his attendance, by reason of his age. The dispensation makes mention of his good service performed to the King, and his deceased father.

Note 3. *Sir John Campbell of Lundie.*

There is a judgment concerning him, which shews the impartiality and firmness of the Court: "*March 21. 1537.* This day Sir John Campbell of Lundie produced an warrand, subscribed by the King, excusing his absence, in respect of the King's affairs, and desiring him to be reponed in all matters concerning himself, and them he does for; and therefore he propones an alledgeance, desiring to be reponed against an interlocutor given in the cause of declarator of non-entry of the lands of Dunmuire in Forfar, pursued by Mr James Foulis, donatar, against Katharine Barclay and her son, for whom he compeared. The Lords, by interlocutor, find, they cannot repon any person, but specially a procurator, in the place that they have negligently tint [lost], without consent of party; and therefore ordains the process to be advised."

He survived all his brethren of the first institution.

There is a remarkable letter from Queen Mary to him, inserted in the book of federunt, 25th February 1560.

"TRUSTY FRIEND, After hearty commendations, having understood, how you in all things continuing the good affection and faithful duty ye have, by the space of these sixty years and more, shown at all times to the advancement of our predecessors service, and has now lately so condignly employed yourself in these matters that concern the weal of our affairs, that we are remained so contented and satisfied, that the occasion shall not offer, but we shall
be

NOTES ON THE CATALOGUE OF

“ be willing to let you know our good will and mind towards you, and would
 “ that you believe ye have as mickle force as good will to continue. We have
 “ seen a pretendit testament of the Queen-Regent, our mother, whom God af-
 “ foilzie, wherein ye are executor, the nullity whereof is evidently known, as
 “ we made evidently appear by the letters we dispatch instantly away to our
 “ realm for that effect; always we will not let to pay her lawful debts, and re-
 “ compence her good and faithful servants. Not the less our intention is, the
 “ same be led and conduced under authority, as it ought, praying to write how
 “ all things hereto belonging shall be handled. So fare you heartily well. At
 “ St Germain, the 8th of October.

“ Your good friend, MARIE.”

Note 4. *Sir James Colvill of Easter Wemyss.*

March 14. 1540. He was forfeited, *after his death*, for having refused to enter himself in ward within the castle of Blackness, and for having consorted with the Earl of Angus, and his brother George Douglas, traitors. His estate was annexed to the crown. Parl. 7. c. 115. James V.

Note 5. *Mr James Foulis of Collington.*

He was clerk-register. In an abridgement of the acts of federunt, it is noted, “ His father is said to have been a skinner in Edinburgh.” To which Lord Pitmedden subjoins, “ This is no reflection; for Secretary Cecil’s father was the same at Stamford in England.”

Note 6. *Mr Robert Galbraith.*

March 12. 1538. He appears as an advocate for Lord Methven, and the Queen’s Grace, his spouse, (the Queen-dowager, widow of James IV.). He was murdered in 1543 by John Carkettill and his accomplices. Books of Sederunt, Feb. 13. 1543.

Note 7. *Mr Henry Sinclair, Dean of Glasgow.*

Afterwards Bishop of Ross, and President of the Court of Session. He and Mr John Sinclair (see 19th November 1540), were the younger brothers of Oliver Sinclair of Roslin, the favourite of James V. It is uncertain whether Henry or John was the author of the MSS. decisions from June 1540, to 15th February 1548, commonly called *Sinclair’s Practica*.

Note 8. *Mr Henry Balnavis of Hallbill.*

He is highly extolled by Knox; but as Knox is apt to exaggerate the virtues of his friends, as the vices of his enemies, it may be proper to mention a less suspicious testimony: “ He was a godly, learned, wise, and long experimented counsellor.” *Melvil’s Memoirs*, p. 27. edit. 1.

Note

Note 9. *Mr John Letham, Rector of Killcraigh.*

His name appears among those of the eight advocates appointed at the institution of the Court. The others were, Mr Robert Galbraith, Mr Robert Leslie, Mr Henry Spittel, Mr Henry Lauder, Mr Thomas Kincaid, Mr Thomas Marjoriebanks, Mr William Johnstone.

About this time, 13th March 1538, I observe, that parties are ordained to give in "their *juris* informations."

Note 10. *Mr Henry Lauder of St Germain.*

He had been King's advocate. On the 13th of January 1538, the King wrote the following letter to the Court. "Rev. Chancellor, President, and remanent Lords of Session, It is our will, and we charge you, that ye, incontinent after the sight hereof, admit our lovit familiar clerk, Mr Henry Lauder, our Advocate, to sit and remain in our council-house, to hear and see delivering of bills, giving of interlocutors, decisions, and determinations of all causes and actions, swa that he may hear and know such things as shall happen to occur that concerns us; exceptand always the actions and causes for the whilks he beis Advocate, and speaks for at the bar allenarly." In consequence of this letter, the Lords took his oath to be secret, and received him into the Inner-house.

Note 11. *Mr John Sinclair, Dean of Resfalg.*

Afterwards Bishop of Brechin, and President of the Court of Session.

Note 12. *Dr John Gladstanes.*

Licentiatu in legibus, as he is often termed. 19th March 1554, he is termed *My Lord Doctor*.

Note 13. *Robert Reid, Bishop of Orkney.*

Formerly Abbot of Kinlofs. I am not certain of the time of his admission. His predecessor, the Abbot of Cambuskenneth, does not appear in Court after 9th March 1542-3. See an account of the deeds of munificence and charity performed by Bishop Reid, in *Mackenzie's Lives of Scots Writers*, vol. 3. p. 46. While one of the Ambassadors to France for the marriage of Mary Queen of Scots with the Dauphin, he died at Dieppe, 14th September 1558.

He wrote "a geographical description of the islands of Orkney, and a genealogical and historical account of the family of Sinclair." So says Dr Mackenzie. But it is more probable, that Bishop Reid only certified the authenticity of those treatises: for Nicolson says, in his *Scottish Historical Library*, that they were signed by the bishop and his chapter.

Note

NOTES ON THE CATALOGUE OF

Note 14. *Sir Robert Carnegie of Kinnaird.*

His commission, from James Earl of Arran, Governor, makes mention, "That there are diverse of the college deceased, and others absent, wherethrough they are not a sufficient number to decide causes." The Lords, at his admission, of his own consent, "decerned, that he should have no profit of the said session while [until] there vaiked a place of one of the Lords Temporal, who had profit thereof before."

Note 15. *John Hamilton, Archbishop of St Andrews.*

George Durie and he were admitted supernumeraries. They had been formerly judges; Hamilton while Abbot of Paisley, Durie while Abbot of Dumfermline. I know not upon what occasion they were removed. The tragical fate of Archbishop Hamilton in 1571 is well known. Buchanan, in several satirical epigrams, speaks of the manner of his death with most illiberal and savage exultation.

Note 16. *Sir John Bellenden of Auchinoul.*

He was Clerk-Register. Dr Mackenzie has asserted, in his *Lives of Scots Writers*, vol. 2. p. 595. that this John Bellenden is the same person with the Archdeacon of Moray, who translated the Chronicle of Hector Boece, and was distinguished as a poet in the reign of James V.

Besides the similitude of names, the only reason that I know for this assertion, is in Bellenden's *Probleme of the Cosmographie*; where he thus speaks:

"And fyrst occurrit to my remembering
 "How that I wes in service with the King
 "Put to his Grace in yeris tenderest
 "Clerk of his Comptis."

Dr Mackenzie gravely says, That "Clerk of his Comptis" is Clerk-Register.

Note 17. *Sir Richard Maitland of Lethington.*

January 7. 1561. The Lords ordained the macers to suffer one of the old Laird of Lethington's sons to come within all the bars as the procurators do, and to ish as they do, for awaiting on his father, for the notoriety of his father's infirmities.

May 11. 1584. "The Lords understanding the great age of the Lord Lethington, they exeemed him, in all time coming, from examination of witnesses, providing he cause his son [Thirlestane], or his goodson the Laird of Whittingham, use the outer-tolbooth for him, in calling of matters, and reporting the interlocutors, as use is."

July 1. 1584. The King's letter upon this occasion is remarkable. It bears, "That Sir Richard Maitland had served his grandfire, goodfire, goodame, mother, and himself, in many public charges, whereof he dutifully and honestly

ly acquitted himself; and having been many years a senator, he has with much sincerity and integrity served therein; and being grown greatly debilitated through age, though nothing in spirit and judgment: whereupon the Lords have granted him immunity and licence to attend when he pleases, having all commodities as if he were present; yet moved in conscience, lest justice should be retarded by his absence, he has willingly demitted his room in our hands in favour of Sir Lewis Ballenden." The salary is reserved to Sir Richard during his life. James IV. the King's grandfire, [or great grandfather], was slain 1513; so that Sir Richard Maitland was employed in public offices for upwards of seventy years.

His advice to Queen Mary deserves to be recorded as the advice of a judicious and faithful counsellor: "That she must see her laws kept, or else she would get no obedience." *Knox.*

He wrote "The history of the family of Winton."—Dr Mackenzie, *Lives of the Scots Writers*, vol 3. gives large extracts from it.

"Decisions of the Court of Session, from 15th December 1550 to 30th July 1565." *MS. Advocates Library.*

"Poems on several subjects," in the Pepysian Library.—Some of them are printed in the *Ever-Green*.

Note 18. *Henry Sinclair, Bishop of Ross, President.*

March 21. 1561. He represented to the Court, "That he was, at the will and pleasure of God, troubled with infirmity and sickness, so that he might not goodly await daily on the Session, but danger of his person." He therefore desired the Lords "to have consideration of his long service in the Session, for the space of these twenty-four years by-past." The Lords consented, "That he have leave, privilege, and freedom, to come and be absent frae the said Session as he best pleases, and thinks expedient; and that he bruik all privileges, immunities, and freedoms, enduring his lifetime, in all points, as if he were personally present with the saids Lords, except the common contribution now instantly used, whereof none are participant but conform to their residence."

Note 19. *Mr Archibald Dunbar.*

January 7. 1578. The Lords excused his attendance, "because he dare not repair to these parts through deadly feud and enmity betwixt him and his chief the Laird of Cummoich, and their friends, and the surname of Innes, according to his supplication sent to the President."

The excuses of absence made by any of the judges, and accepted by the Court, are generally inserted in the more ancient books of federunt. Some of them are here inserted on account of their singularity.

December 19. 1578. Mr Patrick Vanse of Barnbarrow excused because of the notoriety of the foreness and infirmity of his legs.

January 9. 1578. The Lords excused Whittingham, and Mr Archibald Douglas, parson of Glasgow, because the parson has contracted a foreness in his

halfe, [throat]; wherethrough his brother and he remain together, while God send better fortune to them.

July 4. 1582. They allowed James Meldrum, apparent of Segy, to pass to the King's service of Aires of Perth, and also to his sister's marriage; and declared him free of all penalty for offence in times past; and *dispensed with his absence in all time coming*.

January 7. 1584. The Dean of Moray excused, because his daughter is contracted to be married presently.

May 15. 1589. Mr James Elphinston of Innernochtie excused, because lately married.

November 29. 1595. Andrew Wemyss of Myrecarnie excused till the 11th of December, because of his late harvest.

June 28. 1600. Lord Edzell excused during his being in ward.

Note 20. *Mr John Wood. Extr.*

This is probably the person who was secretary to the Earl of Moray, Regent. Melvill terms him "a great ringleader," p. 93.

Note 21. *Mr John Lefly.*

This is the celebrated Bishop of Ross. See a catalogue of his works in *MacKenzie's Lives of Scots Writers*, vol. 2. in fin.

Note 22. *Adam Bothwell, Bishop of Orkney.*

The letter in his favour bears, "Providing always ye find him able and qualified for administration of justice, conform to the acts and statutes of the college of justice." This clause is here inserted for the first time.

Note 23. *Mr David Chalmers of Ormond.*

He left Scotland, and retired into Spain. He afterwards settled in France, where he composed and published the following books.

1. "Histoire abrégée de tous les Rois de France, Angleterre, et Ecosse, 8vo."
2. "La recherche des singularitez (les) plus remarquables concernant l'estat d'Ecosse, 1579. 8vo."
3. "Discours de la legitime succession des femmes aux possessions de leurs parens, et du gouvernement des princesses aux empires et royaumes, 1579, 8vo."

On the 21st June 1586, Mr John Bartane, Dean of Dunkeld, was, in consequence of the act of pacification, obliged to yield his seat on the bench to Mr David Chalmers, the former possessor.

Note 24. *Sir William Maitland of Lethington.*

The Queen having desired the Lords to find forth a man among themselves whom they judged most fit for supplying the vacancy of an ordinary Lord, and to

to make the nomination without affection or favour, they named her secretary Lethington; and she approved of the nomination.

Note 25. *Mr John Wood of Tilliedavy.*

There were some particular circumstances attending his re-admission. May 18. 1566, the Queen informed the Court, that the Commendator of Kilwinning had given his ordinary place to the Sub-chantor of Moray for an extraordinary place, and she ordered them to retain the Commendator in his extraordinary place, notwithstanding his absence in foreign parts; and "to receive no other in his room for any writing given or to be given by us in the contrair." The Lords declared that they would obey this order. Nevertheless, 12th June 1566, a letter from the Queen to the Lords was produced, bearing, "That whereas our lovit Mr John Wood of Tilliedavy was one of the number of our Session, while his putting to the horn, and passing forth of the realm, he was displaced; notwithstanding whereof, for certain causes, we repone him to an extraordinary place; and crave you may receive him without stop." The only extraordinary place which could possibly be considered as vacant, was that formerly possessed by the Sub-chantor of Moray; and in it the Queen had already ordered the Commendator of Kilwinning to be retained. The Court knew not which order to obey; and therefore desired the Chancellor to try the Queen's mind, which of the said two persons she would have received into the extraordinary place. The Queen's mind was somewhat singular: "That the Commendator should have the place; but if Mr Wood inclined to use it till the Commendator returned to Scotland, then the Court might receive him; otherwise not." Upon these terms Mr Wood accepted the place, and was received.

November 12. 1566. The Commendator having returned to Scotland, was received into his extraordinary place. Upon this Mr Wood presented a letter from the Queen, ordaining him to be received into the place of any extraordinary Lord who may be absent; and to be received to the first vacancy of the place of an ordinary or extraordinary Lord. The Lords obeyed the former part of the order; but refused the latter, leaving Mr Wood to make his application to the Queen in the event of an actual vacancy.

Note 26. *Sir James Balfour, President.*

The reason assigned for this promotion was, That the President was originally of the *ecclesiastical side*; whereas Provand was of the temporal. Not very consistently with this, Provand was declared to be President in the absence of Sir James, "The Lord Provand asked instruments of the votes of the Lords, in presence of the Regent; and that he dissented therefrom for his honour."

His *Practics* were published in folio in 1754. That this voluminous work is interpolated, cannot be denied; for it mentions certain acts of parliament, and the names of certain Peers that did not exist till after the death of Balfour. *Vid.* p. 71. 178. &c.

Mr Walter Goodall prefixed to the *Practics* a life of the compiler, in the style of his vindication of Queen Mary.

Note

Note 27. *John Maitland, Commendator of Coldingham.*

The *modus vacandi* is, "because of the parson of Eglisbam his inability, and diverse offences committed by him, whilk merits his deprivation."

Note 28. *Mark Ker, Commendator of Newbottle.*

In the room of the Bishop of Galloway, whose place "vaiks by his continual absence."

Note 29. *Mr Robert Pont.*

Under the name of *Pontanus*, he wrote, *De unione insulae Britanniae*. 8vo. Edin. 1604. He was the father of Timothy Pont, the celebrated chorographer of Scotland. *Nicolson's Scottish Historical Library*, p. 107.

Addit. Note. He was the first presbyterian minister of the West Kirk.

Note 30. *Mr Patrick Vanse of Barnbarrow.*

In the room of Mr Robert Maitland, Dean of Aberdeen, "whose place was vacant by his inability."

Note 31. *Lord Boyd.*

The circumstances of his readmission were singular. The King wrote a letter to the Court, bearing, that "he had lately, 8th May 1578, ordained the Master of Gray to be received into the extraordinary place of Robert Lord Boyd, though he had neither demitted his place of his own good will, nor yet was he removed through any offence, or occasion ministrated by him, but simply upon narratives made to us in his absence; and now since the said Lord Boyd attends diligently, and we and our estates of Parliament have chosen him to be one of our Privy Council, we require you, and it is our resolute will and meaning, to receive him again to his extraordinary place, removing hence the Master of Gray." The Lords obeyed this order.

Note 32. *Mr John Maitland of Thirlestane.*

Afterwards Vice-Chancellor, Secretary of State, President of the Court of Session, and at last Chancellor. Robert Johnston, *Rer. Brit. Hist.* l. 7. p. 204. draws his character in the following terms: "Is meritis, æquitate in rebus judicandis, solertia ingenii, peritia usuque rerum, ut ad posteritatis memoriam fama celebris esset. In prima juventute multis discriminibus obnoxius; post calamitatem Ledingtoni fratris, aliquandiu latuit; provecta ætate gradatim honores et publica reipublicæ munera adeptus, non sine magna invidia procerum administravit, quam immodicis jocis provocavit. Supervacaneum est singula maledicta referre, per quæ in proceres inimicosque suos contumeliosus fuit. At specimen excelsi animi semper edidit: inter aduersas factiones, magnam laudem prudentiæ industriæque tulit; reliquit clarissima monumenta doctrinæ"

• doctrinæ suæ, Epigrammata Latino sermone conscripta. Senescente invidia,
 • quam dies mitigavit, fama ejus vario sermone vulgi celebrata; quibusdam na-
 • tura dicacior visus, et ne inter tempora curarum verbis facietis satis temperans;
 • alias, ubi officio satisfecit, lenis, remissus, urbanus, procul a tristitia aut severitate,
 • jocos temperatos seriis permiscens."

The following epigram on the Master of Gray may serve as a specimen of that fatirical humour which created so many enemies to this great and learned man.

Sis Paris an Graius dubito; pulchelle, videris

Esse Paris, forma, marte, et amore, pari.

Fax etiam patriæ, nec fato aut omine differs;

Græca tamen Graium te docet esse fides.

R. Johnston. *Rer. Brit. Hist.* l. 4. p. 422.

He knew, however, to pay his court by his poetry; for he made a Latin translation of the epitaph on Sir Philip Sidney, by King James, *Delicia Poetarum Scotorum*, vol. 2. p. 138; and of "his Majesty's own sonnet," *King James's Works*, p. 89.

Note 33. Mr David Macgill.

June 26. 1582. He was admitted King's Advocate, in the place of Mr Robert Creighton, deceased. His commission bears, "That he received L. 40 Scots of feal and duty, payable at two terms in the year." The Attorney-General of England has a retaining fee from the King, which is called L. 85 Sterling, but, after deductions, is L. 81 : 6 : 8.

Note 34. Mr John Graham of Hallyards.

Mr Robert Pont, a Presbyterian minister, was incapacitated by the act 133. parl. 1581. passed on the 22d May; so that his place was instantly supplied. On this same 23d May Captain James Stewart, Earl of Arran, appears for the first time as Chancellor. Mr John Graham had attached himself to this person. He officiated as Justice-Depute at the unpopular and odious trial of William Earl of Gowry.

"It was thought the convention of estates, in 1590, would have proceeded to depose some of the Lords of Session, and to bring about a reformation therein. Some accusations and challenges passed in the mean time betwixt Mr John Graham of Hallyards, one of the Lords of Session, and Mr David Macgill the advocate, each of them accusing the other of leading of false process, of bribery, selling of actions, and other things." *Maise's Memoirs*, p. 172.

Note 35. Sir Lewis Bellenden of Auchinoul.

November 27. 1578: He was admitted to be present at the Lords advising of causes, and voting, in virtue of the King's letter; which bears, That the
 Clerk

Clerk of Justiciary was ever of the number of Senators; "which place the said Sir Lewis cannot exerce, by reason of his nonage." This expression probably means, that he was under twenty-five.

Note 36. *Mr Mark Ker, Commendator of Newbottle.*

His commission bears, "to remain therein during our will and pleasure."

Note 37. *Mr Andrew Wemyss of Myrecairnie.*

August 14. 1591. The King named Mr Thomas Ballantine to the place of an ordinary Lord, in the place of Lord Newtyle, deceased.—*November 12. 1591.* This nomination was delivered back to the King, present in Court, by one of the Clerks of Session.—*November 17. 1591.* Andrew Wemyss of Myrecairnie produced a nomination from the King to the same place: "because there is no person truly and really provided thereto with sick due form and solemnity as accords."

Note 38. *Sir John Cockburne of Ormiston.*

R. Johnston, *Rer. Brit. Hist.* l. 6. p. 174. gives the following curious relation of the cause and manner of his death:

"Sandelandius, Calderii Comarchus, mortuo patre in puerili ætate, pupilus relictus est, sub tutela Jacobi Sandelandii Equitis. Ex interiore principis familiaritate defunctus, indulgens uxori, villam et fructuosum agrum, non dotis nomine, sed hæreditario jure attribuit. Per idem tempus, Johannes Gramus, judex rerum criminalium, lucri cupiditate inductus, viduæ nuptias pacificatur; et mulier dedita viro, ut amorem et obsequium probaret, agrum quem a priore marito acceperat, cum fructibus, arbitrio novi conjugis permisit. Is, spe gratiæ et potentiæ, de prædiis rusticis pupillo litem intendit. Jacobus Sandelandius, infensus ea lite, cedere jussit; et tutelam ita gessit, ut fratris filio, cui tutor erat, propugnatorem se pertinacissime præstaret. Gramus nihilominus obstinatus, jus prosequi immoderatus ausus est; et pupillum, calidis artibus, ac juris specie, opimis prædiis spoliavit. Sandelandius, nepotis, veluti fraude circumventi, recenti injuria provocatus, et in vindictam pronus, Gramum trucidare constituit, in omnem patranda cædis occasionem intentus. Rex rumore certior factus, judicum principi exitium imminere, impedire rem non destitit; et edicto ultra Bodotriam summovit, præsentis mali unicum remedium ratus. Gramus paruit edicto, et comitatu non inermi propinquorum et clientum urbe excessit, ut paratus esset, si quid adversarii contra molirentur. Unde Sandelandius, ira et impetu, pessimis consultoribus, abreptus, multiplici comparata clientela, intolerandam Grami injuriam amicis exposuit: qui facile in cædem ejus consenserunt, et rei aggrediendæ signum expectarunt. Cum hac manu sævum atque atrox facinus aggredi est ausus, in suburbio urbis regiæ. Gramum clientes plurimi deseruerunt; pauci protexerunt: ipse obstinatus ad resistendum, magna cum invidia jugulatur.—Actores sceleris non solum poenæ exempti, sed aula et conspectu Regis vix abstinerunt. Ingentem ea cædes fremitum in tota Scotia fecit."

From

From this narrative it would appear, that the King of Scotland was obliged to banish a Judge of the Court of Session, in order to protect him from assassination.

Spottiswoode, however, p. 391. relates this event in a different manner.

"Some two days before his [Fintry's] execution, Mr John Graham, one of the Senators of the College of Justice, being charged (because of the business he made in behalf of Fintry) to depart forth of the town, and keep ward in Strathern, was killed as he was going to the tide at Leith. There had been a question long depending betwixt Sir James Sandilands and him for the lands of Hallyards, and by reason thereof a professed enmity among them; and it falling out, at the same time when he was going to Leith, that the Duke of Lennox, accompanied with Sir James, and divers others, was making towards their sport in the sands, Mr John Graham apprehending that they did pursue him, made a turn upon that ascent which is without the gate of the town, as if he would stand there to his defence; which Sir James taking for a sort of provocation, he made towards him, and entering in conflict, Sir Alexander Stewart, a grave gentleman, servant to the Duke of Lennox, was killed by the shot of a pistol: presently after Mr John Graham by another shot was stricken in the breast, and fell to the ground. They who did give him the convoy, seeing him fall, did all fly; and the companies separating, he was led to a poor cottage near unto the place, and, as he lay in bed, killed by the said Sir Alexander his page, in revenge of his master's death.

"A man he was, but meanly born, and descended of that unhappy race which had an hand in the murder of King James I. A long time he served as deputy to the Earl of Argyle in the justice-courts, and after his death waited on Captain James Stewart, by whose means he was preferred to be one of the Senators of the College of Justice, in the place of Mr Robert Pont; of a quick wit, and a good and ready utterance; but was excessively proud, covetous, and dishonest in his dealings, as appeared in suborning of the notary of whom we spake, and the fraud which he used to Mr Andrew Polwart, Subdean of Glasgow, a man of great learning, who being forced to fly into England, in the year 1584, with the other ministers that took their refuge thither, had intrusted him with his living and rent, upon assurance to be repossessed when the time should change; yet being returned, and having obtained his peace, could never bring him to fulfil his promise; whereupon, after a long plea at law, not finding an outgate, the honest man conceived a displeasure, and died."

Note 39. *Mr John Skene of Curriebill.*

Melvil says, "I told his Majesty, that I would chuse to take with me, [on an embassy to Denmark], for a lawyer, Mr John Skene. His Majesty said, He judged there were many better lawyers. I said, He was best acquainted with the German customs, and could make them long harangues in Latin; that he was a good true stout man, like a Dutchman." p. 178.

He

He is known for his editions of the *Regiam Majestatem*, and *Old Laws of Scotland*; as also for his treatise *De verborum significatione*. It were to be wished that his knowledge of Scottish antiquities had been equal to his industry.

Note 40. *Mr John Preston of Fentonbarns.*

The King named Mr Peter Rollock, Bishop of Dunkeld, Mr David Macgill of Cranston-Riddel, and Mr John Preston of Fentoun, requiring the Lords to chuse the fittest of the three to be an ordinary Lord of Session. The Lords were solemnly sworn to chuse according to their knowledge and conscience. In consequence of this, *conjectis in pileum nominibus*, [by ballot], the Lords elected Mr John Preston. The abridger notes, "That he was a baker's son in Edinburgh, was made a Commissary 14th May 1580, and afterwards came to be "President of the Court."

Note 41. *Mr David Macgill of Cranston-Riddel.*

Robert Johnston, *Rer. Brit. Hist. l. 7. p. 231.* mentions a circumstance concerning the Court of Session at this period, which is exceedingly singular. "Hac tempestate, totus ordo judicum paucorum improbitate et audacia infamatus: inveteravit enim opinio, et omnium fermone percrebuit, *pecuniosum hominem neminem posuisse causa cadere.* Alexander Regius [King] Advocatus, acer et vehemens, illam labem et ignominiam ordinis callide observans, a clientibus suis pecuniam accepit, quam corruptis judicibus, pro suffragiis, divideret. Hæc et similia in causa fuere, ut totus ordo gravi diuturnaque infamia laboraret. Neque enim aliam ob causam, plebs ministrorum tribunitiam potestatem tanto studio prosecuta est, nisi ut in concionibus audiret judicum officium male ac flagitiose exexerci, judicia turpia ac flagitiosa fieri."

Note 42. *Sir James Wemyss of Bogie.*

From 24th February 1604 to 19th June 1605, there is a blank in the register. Many leaves have been lost out of it. During that interval it would seem that *Bogie*, *Wrightslands* and *Craigtoun*, were admitted in the room of *Myrecairnie*, *Auldbar*, and some third person, whom I cannot discover.

Note 43. *Mr Thomas Hamilton of Prestonfield.*

The manner of his trial is particular. The Chancellor, in presence of the Lords, appointed him next day to open and explain the *l. 2. C. d. Testibus*, and to discourse upon it in Latin, and then to resume causes, and give his opinion. Then follows, 29th May 1607, "The said Mr Thomas compeared; and after reading *l. 2.* and gloss thereof, having expounded it in Latin be the space of a quarter of an hour;" and having also resumed some causes, and given his opinion, he was admitted. He took an oath, That, neither directly nor indirectly, he had procured the place by gold or silver.

Note 44.

Note 44. *Sir Alexander Drummond of Medhope.*

The King's letter requires the Lords to take trial of his qualifications, and those of Mr Peter Rollock of Piltoun, and Mr Thomas Henderson, Advocate, and to admit the best qualified. Sir Alexander himself is admitted. Upon other occasions also it appears, that the presenter of the letter was found the best qualified.

Note 45. *Peter Rollock of Piltoun.*

He had been formerly removed when Bishop of Dunkeld, that the number of extraordinary Lords might be reduced to four. He was now readmitted upon the King's letter, with a special proviso, That this should not be a precedent for establishing a fifth extraordinary Lord.

Note 46. *Sir Gideon Murray of Elibank.*

The Lords dispensed with any trial of his qualifications, "because of the certain knowledge they had of them."

Note 47. *Thomas Hamilton, President, Lord Binning.*

In 1587 he was admitted an advocate; 1592 he was made an ordinary Lord of Session; 1595 King's Advocate, and one of the Octavians; 1612 Lord Register, Secretary of State, and King's Advocate for life; 1613 Lord Binning and Byres; 1616 President of the Court of Session; 1619 Earl of Melrofs; 1627 Earl of Haddington, and Lord Privy Seal. He died in 1637.

"In foro summum auctoritatis atque eloquentiae gradum obtinuit; et multa fructuosa prædia, sine injuria cujusquam, possedit." *R. Johnston, Rer. Brit. Hist. l. 8. p. 244.* He made great part of his fortune out of the mines in his estate.

Dr Arthur Johnston draws his character thus:

"Plus nulli Fortuna dedit de gente Britanna,
"Fortunam nemo tam reverenter habet."

He drew up Decisions of the Court of Session, from 1592 to July 1624, *MS. Advocates Library.* His manuscript collection of charters, &c. are well known.

Note 48. *Sir George Erskine of Innertell.*

He drew up some decisions of the Court of Session, while he sat on the bench.

Note 49. *Sir Alexander Gibson of Durie.*

Of him Mr Robert Burnet of Crimond thus speaks, in his preface to *Craig, De Feudis*. "Oculatus fui testis sæpe, per spatium 24 annorum, cum eum aliquid quando

quando honoris causa, aliquando ob negotia, interpellarem, nunquam eum a me deprehensum nisi occupatissimum in jure Civili, et doctoribus juris evolendis; jus enimoticum in scrinio pectoris gestabat, et ut conjicio in jure Civili cum jure Scotico maritando."

He drew up "Decisions of the Court of Session from 11th July 1621 to 16th July 1642." They were published by his grandson Sir Alexander Gibson, with an approbation of the Court. *Acts of Sederunt*, 6th July 1638.

Note 50. *Sir Robert Spottiswoode of New-Abbey.*

Second son of Dr John Spottiswoode, Archbishop of St Andrew's, and Chancellor of Scotland. On the 1st of November 1633 he was chosen President of the Court of Session, upon the King's recommendation: he continued to exercise that office till the end of the year 1637; when, being obnoxious to the leaders of the popular party, and declining to take the covenant, he abstained from attending the Court. In 1641 he was declared one of the incendiaries, or evil counsellors. The Parliament of Scotland, in that year, addressed the King, that Sir Robert Spottiswoode might be removed from about his person. In 1645 he was made Secretary of State, in the room of the Earl of Lanark. He attended the Marquis of Montrose in his unfortunate march towards the Tweed after the battle of Kilsyth. He was taken prisoner at the rout near Philiphaugh, 15th August 1645. A statute had been made in June 1644, which declared the taking up arms against the kingdom and estates of Scotland to be treason; on this statute Sir Robert was tried, and found guilty, by a committee of Parliament, 16th January 1646. The Parliament ordered him to be beheaded. The sentence was executed at the market-cross of St Andrews, 20th January 1646.

The Earl of Caillies, President of the Court which tried him, dissented from the judgment; although, in virtue of his office, he signed it. This circumstance is mentioned by Sir John Nisbet of Dirleton, who was of counsel for Sir Robert, in an elegy on his death.

"Testatus scripsisse manu non mente, placebat

"Quodque aliis frustra displicuisse sibi."

The particulars of his trial and execution are to be found in *Memoirs of his life*, prefixed to his *Practises of the Law of Scotland*, published in folio, 1706, by his grandson Mr John Spottiswoode, advocate.

Note 51. *Sir John Hamilton of Magdalens.*

The records of the Court of Session, from 17th May 1608 to 2d February 1626, are lost; so that it is probable that this catalogue is not altogether complete during that period. Sir John Hay was on 27th July 1622 admitted Clerk-Register. It is probable that he was a Lord of Session long before; but the date of his admission is not known.

Note

Note 52. *Sir Archibald Napier of Merchistoun.*

He was the son of the famous Merchistoun.

Note 53. *Sir George Auchinleck of Balmanno.*

He drew up some Decisions of the Court of Session while he sat on the bench.

Note 54. *Sir Archibald Acheson of Glencairn.*

He had been Puisne Judge in Ireland. He was knighted for having suggested to Charles I. the measure of issuing out a commission under the great seal for the surrender of tithes, *Heylin's life of Archbishop Laud*, p. 224. 225. During a few years he was Secretary of State for Scotland.

Note 55. *Lord Ereskine.*

The reader will observe, that at this time there was a total change of the extraordinary Lords. The reason assigned for this by the King, in making the new nomination, is singular. He says, That at the time of his appointing the extraordinary Lords now displaced, "we declared our resolution to change them after some reasonable space; though we do acknowledge that they have very faithfully behaved themselves in that which did concern their charge; for which we give them very hearty thanks; yet to continue our first resolution and privileges," &c.

Note 56. *Sir John Scot of Scotstarvet.*

Better known for his ill-informed satire, *The staggering state of the Scots statesmen*, 12mo, 1754, than for his patriotic labours in promoting the publication of the *Theatrum Scotiae*. Concerning this, see many curious particulars, though affectingly expressed, in the preface to the *Theatrum Scotiae* by the younger Bleau. He was also at the expence of printing the *Delicia Poetarum Scotorum*. 2 vols, 24mo, 1638. There is a MS. volume of letters to him, from learned men, in the Advocates Library.

Note 57. *Lord Lindsay.*

Afterwards Earl of Crawford.

Note 58. *Sir James Hope of Hopetoun.*

In consequence of an act of Parliament 1649, the following nine judges were removed for what was then termed malignancy; Innerpeffer, Orbieston, Carmichael, Balcomie, Halkertoun, Durie, Lee, Newton, Earl of Crawford. In their room the Parliament

Parliament appointed *Hopetoun, Broomhall*, (designed in the rescinded acts *Gellais*), *Southball, Ford, Clerkingtoun, Libbertoun, Brodie, Hartree, Cefnock*, Earl of *Cassilis*. It does not appear that *Cefnock* ever took his seat.

Note 59. *George Smyth, Esq;*

The salary of an English judge was L. 600 Sterling; of a Scots judge L. 300; the three Clerks of Session had L. 200 each; the Clerk of the Bills L. 200; Director of the Chancery L. 100; Clerk of the General Register of Hornings, L. 100; Clerk of the General Register of Seifins L. 100; Receiver of the Fees L. 140; Doorkeeper L. 40. *Thurloe's State papers*, vol. 4. p. 528.

The English judges, on the 9th November 1654, wrote a letter to Judge Smyth, one of their number, then at London, praying that he would deal with the Protector, "That some of the Scottish nation may be added to their number."

There is a tradition, that equal justice was administered by the English Judges, during the usurpation; and for this an invidious reason is assigned, That they were *kinless*, and unconnected with the people of Scotland. The following letter from General Monck to Secretary Thurloe, *Thurloe's State papers*, vol. 6. p. 65. may serve to shew, that they were sometimes thought to be influenced by other considerations than those of duty.

HONOURED SIR,

Being earnestly desired by the Laird of Buchanan (who is one that hath been very faithful and serviceable to us) to write to you in his behalf, I make bold to acquaint you, that his Highness, about two years since, was pleased to grant an order to the Judges in favour of Lieutenant Osborne, between whom and the said Buchanan there was a suit depending, whereupon a decret was passed against the said Buchanan; which truly I am persuaded, if his Highness had been rightly informed, he would not have done: for I am persuaded, if it had not been for his Highness's order, the business would have gone on Buchanan's side. And all that he now desires is, that his Highness would be pleased to grant an order to leave it to the Judges to proceed upon the hearing of the whole, according to justice, and the laws and practice of this nation; for the procuring of an order to which effect, I intreat you to stand the said Buchanan's friend to his Highness, he being both an honest and discreet gentleman, and one who hath carried himself so faithfully to the present government, that I know few deserve better, notwithstanding some hard dealing he has had from us.

I remain, &c.

Dalkeith, 17th February 1655-6.

Note 60. *Mr John Swinton of Swinton.*

He was appointed one of the Council; but continued for some time after to sit as Judge. This occasioned Lord Broghill, President of the Council in Scotland,

land, to write to Secretary Thurloe in the following terms : " Some of the
 ' Judges stick not to say, that acting in two capacities does not only overawe
 ' some that sit on the judicial bench, but that thereby the number of Scotch
 ' Judges does exceed the number of the English ; whereby the words, *according to*
 ' *equity and good conscience*, which are indeed the only words in their commissions
 ' that give a rise to bring the laws of Scotland to the laws of England, will be
 ' rendered useless ; for all those who are Scots are much averse to that expression,
 ' and plead hard to keep the Judges to the known statute-law, vol. 4. p. 524." This is a very remarkable passage. The reader will observe, that, under the pretext of judging *according to equity and good conscience*, there was an intention of abrogating the law of Scotland, and introducing that of England in its place.

Note 61. *Mr Andrew Ker.*

Lord Broghill thus writes to Secretary Thurloe : " Since Colonel Lockhart
 ' and Mr Swinton's being made of the Council here, the Court of Justice have
 ' had but five Judges to carry on that duty. By their commission four is a
 ' quorum ; and by the rules of the Court, it consists of two houses, the one
 ' termed the *outward*, and the other the *inward-house*. This cannot have less
 ' than four ; *that* never had more, neither can it have less than one." After
 having described the manner of proceeding in the Outer-house, he adds, " The
 ' Judge of which house ought to be an able man, both of parts and body, the
 ' work requiring good intellectuals and experience, as well as corporal strength.
 ' For want of such a one, all causes of late, which properly are to be deter-
 ' mined there, have been brought into the Inward-house, whereby four were
 ' employed in what one might have done ; and so the people had not that ex-
 ' peditious justice which was requisite and usual ; and thereby, as the Judges
 ' inform me, there is at the present near 50000 processes depending †. This
 ' great stop of justice made the Council esteem it absolute duty to remove the
 ' cause thereof, by restoring the Outward-house, and placing a fit person to dis-
 ' charge the burden thereof ; which they have done this day, not being able any
 ' longer to delay it, the Judges themselves in effect declaring the great necessity
 ' of it. The man they have pitched upon is Sir James Lermonth of Balcomie.
 ' And because it was found, few fit persons of the old Lords of the Sessions
 ' were willing to act, and that such as were had had some private meeting
 ' among themselves, when they resolved, none would accept a Judge's place, un-
 ' less it were for life, or good behaviour, whereby they would, as much as in
 ' them lay, have set the dice on the Council ; it inclined the Council the more,
 ' not only to chuse Sir James Lermonth, as having been free from that engage-
 ' ment, and willing and able to act, but also (to let all the other Judges see we
 ' were not, nor needed not, be bound up to their order) to elect, for another
 ' Judge, one Mr Andrew Ker, an advocate, who the General and some of the
 ' Judges.

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† This is incredible ; probably there is a mistake in the printing, and that 50000 is put for 5900.

‘ Judges assured the Council was an able godly man, and had by divers actions
 ‘ evinced his sincere affection to the government. To which, as a further rea-
 ‘ son for their so doing, may be added, that the duty of the Outward-house
 ‘ would have deterred any one man from accepting it, had he not seen an able
 ‘ associate, who might from time to time have eased him therein: for though
 ‘ there is one Scotchman now upon the bench, viz. the Lord Southhall, yet he
 ‘ is wholly unable for that work, and would not undertake it. Besides, we
 ‘ understand there are some things against him, which possibly will soon invite
 ‘ them to lay him aside. I did acquaint the Council with a part of my Lord
 ‘ Lambert’s letter to me, relating to the Judges; which imported, that we
 ‘ might speedily expect to hear further therein; and that in the mean time, if
 ‘ possibly, we would delay electing any. But the necessity demonstrated by the
 ‘ Judges, and visible to the Council, joined with the impossibility of having any
 ‘ from England able to do the work of the Outward-house, made them proceed
 ‘ to that election at the present; which will not hinder the receiving of any
 ‘ from England, if sent; and indeed at least one eminent man from thence will
 ‘ be necessary; which, I beseech you, Sir, be pleased to mind.”

Note 62. *Mr James Dalrymple of Stair.*

Recommended by General Monck. Letter to Oliver Cromwell, *Edinburgh*,
 23^d June 1657, *Thurloe’s State-papers*, vol. 6. p. 367. “I make bold to men-
 ‘ tion to your Highness, one Mr James Dalrymple, as a person fit to be a Judge,
 ‘ being a very honest man, a good lawyer, and one of considerable estate. There
 ‘ is scarce any Scotsman, or Englishman who hath been much in Scotland, but
 ‘ know him; of whom your Highness may inquire further concerning him.”

The manner of his appointment is singular, as appears from a letter of
 Monck’s to Cromwell, June 26. 1657. *Thurloe*, vol. 6. p. 372. The letter
 being curious on many accounts, is here inserted. “I am appointed, by your
 ‘ Highness’s Council here, humbly to acquaint your Highness, that some few
 ‘ weeks since, the Lord Southhall, who was one of your Highness’s Commis-
 ‘ sioners for administration of justice to the people in Scotland, having departed
 ‘ this life, and it having pleased God now to take away from us the Lord Bal-
 ‘ comie, another of the said Commissioners, who died this forenoon in the House
 ‘ of the Session of the said Commissioners, whereby the number of the said Com-
 ‘ missioners is become so few, that here are but four of them now upon the
 ‘ place, which is the least number that can, by their commission, act in the
 ‘ Inner-house; and the constitution of the judicature being such, that in an
 ‘ Outer-house, which is still in use for judging of matters, not of so great mo-
 ‘ ment or intricacy, as that either party concerned would insist upon having the
 ‘ judgment of the Judges of the Inner-house in them, one of the Judges would
 ‘ determine and adjudge in many civil causes, which did spare much pains to
 ‘ the whole judicature in deciding of causes of lesser importance, and without
 ‘ which, proceedings would be too slow. But this death of the Lord Balcomie
 ‘ hindering now the keeping of the Inner and Outer-house, which is that whole
 ‘ judicature together, the quorum now left here being barely competent for the
 ‘ Inner-

* Inner-house; and it being the time of the Sessions, which continues but for the months of June and July, the next Sessions not beginning till the 1st of November, and great numbers of people being attending the dispatch of their causes there depending, your Highness's Council here found themselves in a strait, because they apprehended, that, as it is necessary, for the carrying on of justice to the people, another Judge should be appointed, who is very able in the laws and practice of proceedings here, to keep the Outter-house, wherein the Lord Balcomie did frequently sit, having been one of the ablest for it; so they would be very unwilling to place one in such a trust, without your Highness's express orders and appointment, if the administration of justice, which they are, by their instructions from your Highness, appointed to see duly administered, could be otherwise effectually proceeded in without intermission.

" Yet, believing it to be your Highness's intention that they should supply such a present exigency, in a time so pressing, they bethought, and have pitched upon a person of eminent abilities, namely, Mr James Dalrymple, an advocate, of whose qualifications and good affections they have ample satisfaction, to be one of the said Commissioners, for administration of justice, at the same salary which the Lord Balcomie had, being L. 300 *per annum*, according to the establishment of Scots Judges; of which choice they humbly crave leave to desire your Highness's approbation."

Note 63. *Sir Archibald Johnstone of Wariston.*

He was appointed during pleasure. This nomination could not be agreeable to Lord Broghill, President of the Council in Scotland; for he thus writes to Cromwell: " Part of the remonstrators are led by the Laird of Wariston, and Mr James Guthrie, who are bitterly averse to your Highness's authority, if not to any. Indeed, by as much as I can recollect, after several discourses and meetings with the Lord Wariston, and Mr Guthrie, those of their judgement are, as I may call them, *Fifth-monarchy Presbyterians*; and, according to their principle, setting aside some little shew of Presbyterian discipline, which yet they allow none to practise over them, but would practise it over all others, they are nearer a closure with the late Allhallows men, [Fifth-monarchy men, who had raised disturbances], than any others." *Thurloe's State-papers*, vol. 4. p. 557.

Mr James Sharp, afterwards Archbishop of St Andrews, gives the following account of a conversation he had with Jones, one of the regicides, concerning Wariston: " He came to speak of Wariston. This day, said he, we have had an hour's speech of Wariston; we have not much to do in our house, [the Upper-house]; and it spends our time to hear him: he would be a fit member of the Lower-house; for he would be always speaking. I told him, I had heard of Wariston's late declarations against Valentines, and a stage-play, lately acted by Sir William Davenant: he laughingly said, We have some such stories now and then.

" Then speaking of Wariston again, he said, That at the appointment of the last fast, he had a speech of an hour long, which he read off his note-book, as usually

usually he doth, against the fast; and yet, in the close, he concluded positively for it. Lord Jones added, You need not think that Wariston, by his speeches, will turn the house round. I perceive," says Sharp, "he hath, by his ramblings, discovered his weakness, and lost his repute amongst them; and it is like, if he hold on, that he will serve for interludes in that house, as Cochran did in the House of Commons in the other Parliament. One told me this day, that a Parliament-man had said to him, that there was not one of the Scots members who did speak, or could speak in their House; but there was one in the other House was always speaking to little purpose." *Letters to Mr Robert Douglas, 22d February 1659, MS. in the Library of the Church of Scotland.*

The following letter from the same person is on many occasions exceedingly curious.

"As for Wariston, I have a letter of his to Lauderdale, by the last post, bearing, that Monsieur Morus had wrote to him, *per sanctam permissionem summorum potestatum*, that he should have his pardon, and be received into special favour and trust, if he did not obstruct the entry of the King; and having, in his confused large way, given him a deduction of the particulars of his carriage, disclaiming accession to the King's death, and taking his great reason from the examples of Daniel and Nehemiah, who being captive, accepted of the call of their oppressors, that they might be in capacity to deal for the service of, and relief of their country, he does conclude with a desire that the Earl of Lauderdale would interpose for his pardon and reception into his Majesty's favour, and restoration to his place, engaging all fidelity and loyalty to his Majesty. My Lord Lauderdale will be loth to undertake such an employment as he would put upon him; and if he expects to keep his place, or be received into favour, sure he is much deceived. The King bears no good will to any of that party; and for him, if he escape somewhat else than the loss of his place, I believe he will have good luck." *Letter, 2d June 1660, Mr James Sharp to Mr Robert Douglas, in the Library of the Church of Scotland.*

The Earl of Middleton thus writes to Sir Archibald Primrose, Clerk-Register, 3d February 1663. "Mr Secretary Bennet, my Lord Dumfries, and myself, were taken up this whole day with examination of Wariston, and some others. He pretends to have lost his memory, and so will give no account of any thing. He is the most timorous person that ever I did see in my life, and pretends he can do the King great service, if he will give him his life, in putting the registers in good order, and setting the King's prerogative from old records." *MS. Advocates Library.*

See Wariston's character, drawn by his nephew Bishop Burnet, *History of his own times*, vol. 1. p. 28. and an account of his execution, *ibid.* p. 203. It is reported by Mr Woodrow, in his *History of the Church of Scotland*, that Wariston's Memoirs, drawn up by himself in the form of a diary, are still extant. If they are extant, they well deserve to be published; for he was perfectly acquainted with the transactions of that busy and interesting period, from 1638 to 1660.

Note

Note 64. *Sir John Gilmour, President.*

His character as a pleader is thus drawn by Sir George Mackenzie, *Idea eloquentiæ forensis*: "Sine ullo juris Civilis auxilio doctissimus, raro miraculo, dici poterat; ingenioque suo praxin fori Scotici juri etiam Romano æquabat. Illum jura potius ponere, quam de jure respondere dixisses; eique appropinquabant clientes tanquam judici potius quam advocato. Quasi alter etiam Hercules nodosa et nulla arte perpolita clava adversarios prostravit; sine rhetorica eloquens, sine literis doctus. Opposuit ei Providentia Nisbetum, ut justitiæ scalæ in æquilibrio essent. Quoties conflixerunt, penes Gilmorium gloria, penes Nisbetum palma fuit; quoniam in hoc plus artis et cultus, in illo plus naturæ et virium." It is hard to say what Sir George Mackenzie means by the antithesis of *gloria* and *palma*.

The bold stand which he made in behalf of the Marquis of Argyle, will be ever remembered to his honour.

Note 65. *Sir Robert Murray.*

The first President of the Royal Society. He was the patron of Bishop Burnet, who gratefully celebrates him in the 1st volume of the history of his own times.

Note 66. *Sir George Mackenzie of Tarbet, removed.*

He was removed on account of the share which he had in the famous act for incapacitating by ballot, commonly called *the act for billeting*. He was afterwards restored to favour, as the King's letter to the Court of Session bears, 27th September 1678: "Considering how before that, and even in the worst of times, he had, on all occasions, evidenced an entire loyalty and fidelity to us; and that since he has not only shewed a dutiful acquiescence to our will, and his grief for the wrong he had committed in that affair, but also that he hath laid hold on all fit opportunities to demonstrate his constant duty and loyalty to us, and affection to our minister, [Lauderdale], whom he had injured; and upon narrower search into his deportment, finding, that in the fault committed by him, he was not only induced, but commanded, to it by our then Commissioner, [Middleton], and severals of our Principal Officers, as the instructions given to him, and other authentic papers, have evidently made appear unto us," &c.

In 1678 he was made Justice-General; 1681 Lord Register; 1685 Viscount Tarbet; 1692 again Lord Register; 1702 Secretary of State; 1703 Earl of Cromarty. He was also restored to his office of Justice-General, which in 1710 he resigned, upon a compromise, to Archibald Earl of Hly.

NOTES ON THE CATALOGUE OF

Note 67. *Sir Robert Nairne of Strathburd.*

He was a distinguished Royalist, and on that account suffered a ten years imprisonment in the tower of London, from 1650 to 1660. He was created Lord Nairne in 1681.

Note 68. *Mr Robert Burnet of Crimond.*

He married Rachel Johnston, Lord Wariston's sister. Her mother, Elizabeth, was the daughter of Sir Thomas Craig. He published an edition of his grandfather's celebrated treatise *De Feudis*. He left Scotland at the breaking out of the civil war in the reign of Charles I. and retired into France. See a spirited and elegant letter from him to his brother-in-law Lord Wariston, *Memorials concerning the history of Britain*, vol. 2.

He was the father of Bishop Burnet. See his character in the *Life* of the Bishop, by Sir Thomas Burnet.

Note 69. *Mr James Robertson of Bedlay.*

His answer to the President, upon being required to take *the declaration*, is remarkable: "I never had, nor have, any scruple to declare as is required by 'act of parliament concerning the covenant, *except I should, for popularity, belie*
' *my own conscience*; so let me humbly desire your Lordships, that I be not ac-
' counted among the refusers. My great age and sickness may shortly make an
' end of my service; but it becomes me, in obedience to the King his Majesty,
' and your Lordships order, to speak the truth before God."

Note 70. *Mr John Scougal of Whytekirk.*

He died on the 7th of July 1671. The Lords of Session assisted at his funeral, being attended by the advocates and writers in mourning, and having their maces carried before them.

Note 71. *Sir David Nevo of Nevo.*

He had been a professor in St Leonard's college at St Andrews. At his first admission he was termed *Lord Reidie*.

Note 72. *Sir James Dundas of Arniston, resigned.*

He resigned, because he scrupled to take *the declaration*. His letter to the President on this occasion deserves to be remembered: "I did some weeks ago
' send a demission of my place in the Session to the Court, which I hope before
' this time is presented to the King's Most Sacred Majesty, whereby I am alto-
' gether incapacitated to give obedience to the Lords of Session their commands
' put upon me as one of their number. This, I hope, will excuse me for not
' waiting upon their Lordships; and shall intreat their Lordships may believe,
' that

“ that though I shall no more be able to serve them as a public minister, yet I shall never omit any thing that shall be in my power as a private man, whereby I may witness the deep sense I have of their Lordships civility and kindness to me while I had the honour to sit among them; which can never be forgotten by,” &c.

Note 73. *Sir John Nisbet of Dirleton.*

“ A man of great learning, both in law, and in many other things, chiefly in the Greek learning. He was a person of great integrity, and always stood firm to the law.” *Burnet's History*, vol. 1. p. 279.

Sir George Mackenzie thus delineates his character as a pleader: “ Opposuit ei [Gilmorio] providentia Nisbetum; qui summa doctrina consummataque eloquentia causas agebat, ut justitiæ scalæ in æquilibrio essent; nimia tamen arte semper utens artem suam suspectam reddebat. Quoties ergo conflixerunt, penes Gilmorium gloria, penes Nisbetum palma fuit; quoniam in hoc plus artis et cultus, in illo plus naturæ et virium.”

Some idea may be formed of his character of a judge from the following passages in his works: “ Nihil quidem a religione judicantis magis alienum est quam προσωποληψία, ea divino et omni jure vetita, ægre tamen vitatur: et quod de Marte, et Venere, et de Vulcani vinculis occultis sed tenacibus in fabulis est, verum est de affectibus animum impredientibus, ne verum et justum cernere possit: imo ubi lex et regula haud deest, interdum instar Lesbæ, colorez liquo eo torquetur, quo affectus impellit.” *De Feodo pecuniæ et nominum. Doubts*, p. 65.

— “ I have often urged, that favour is not *nomen juris*, and law ought to be uniform, and not *Lesbia regula*, pliable and variable upon pretences of favourable and not favourable; *sed nunquam credita Teucris Cassandra.*” 24th July 1666, *Petrie against Rickart. Decisions*, p. 12.

Sir John Nisbet was the son of Patrick Nisbet of Eastbank, Lord of Session in 1636. He was appointed King's Advocate, 4th November 1664, upon the demission of Sir John Fletcher. He was the last person who held at one time the offices of Lord of Session and King's Advocate.

His *Doubts*, methodised by Sir William Hamilton of Whitelaw, and his *Decisions*, from 7th December 1665 to 26th June 1677, were published by Mr Robert Bennet, advocate, 1698.

There are interpolations in his *Doubts*. See the title, “ *Reduction ex capite lecti*,” p. 150. where mention is made of a decision, “ *Davidson against Davidson, November 1687*,” although Dirleton died in 1678. There can be no mistake as to the date of the decision; for both the case and the argument are stated at great length by Harcarfe, title, *Lectus ægritudinis*; and the decision is there marked as pronounced between the parties in November 1687.

NOTES ON THE CATALOGUE OF

Note 74. *Marquis of Montrose.*

To distinguish him from his *great* predecessor, he obtained the more amiable appellation of *the good Marquis*; and by that he is still affectionately remembered in Scotland.

Note 75. *Sir Peter Wedderburn of Gosford.*

He was sole Clerk of Privy Council. He drew up "Decisions of the Court of Session," from 1st June 1668 to the end of July 1677, MS. His amiable character is thus drawn by Sir George Mackenzie: "Wedderburnus morum probitate iudices clienti conciliabat, dicendique suavitate eos corrumpere potuisset, si voluisset; *nihil autem ille in facto, nisi quod verum*, nec in jure, nisi quod justum, pathetice urgebat. Ciceronis lectioni semper incumberebat; unde illi dicendi genus uniforme et flexanimum: ex junioribus tamen nullus illum imitari poterat, sicut ille Ciceronem; eloquium materiam, actio eloquium decorabat, famaue fugientem prosequabatur."

Fountainhall says, vol. 1. p. 48. 3d June 1679, "President Stair being at London, the Lords, according to their custom, and the warrant given them by the 93d act, Parl. 1579, elected *Lord Gosford* Vice-President. Some thought that Collington or Strathurd, as the eldest senators, might preside, conform to the 93d act, parl. 1540; others, that the King might name one to supply the President's place in his absence, as was done in the 42d act, Parl. 1537."

Note 76. *Mr Charles Maitland of Halton.*

The manner of his admission is singular. The Lords appointed two of their number "to confer with him *concerning his literature*;" and upon their report admitted him.

Note 77. *Sir Thomas Murray of Glendoick.*

Concerning the admission of Lord Forret and him, Lord Dirleton thus speaks, *Decisions*, p. 71. 72. "The King's Majesty having, by two letters to the Lords of Session, presented Mr David Balfour of Forret, and Mr Thomas Murray, both advocates, to be Lords of Session, it was moved by one of the Lords, that seeing by the law and acts of Parliament, those who are to be admitted to be Lords of Session should be tried, therefore the trial should be such as is intended by the law; the very notion of trial importing at least a serious, if not a strict and exact way of trial."

"This was moved, because that way of trial had become of late so perfunctious, and *dicis causa*, that it was ridiculous, and in effect a mock-trial; some of the Lords being appointed to examine those who were named by the King, and after they had asked some trivial questions, having made report, that they found them qualified, albeit it was not only known to the examiners, but to all the Lords, and notour to the world, that they were altogether ignorant both of law and practice, and did acknowledge it themselves, not daring to expose themselves to sit in the Outer-house as Ordinaries, they prevailing with others of the Lords to go out and officiate for them, as curates."

After

After having mentioned the reasons for this, Lord Dirleton adds, "It was answered, That the way of trial that had been for a long time, should be continued at this time; and that the motion was upon some design.

"The mover did purge himself, upon oath, that he had no design, but to do duty; and did attest the President [Stair], that before this occasion they had spoke often to that purpose; and did represent, that this is the fit time to put the law and statutes in execution, the persons named being advocates, and persons presumed to be able to undergo the trial; so that it cannot be thought that there is any thing of design against their persons; that it cannot be denied but the late way is abusive, and *antiquitas erroris*, or *abusus*, cannot be thought and pleaded to be custom; that in the year 1629, the Lords, by an act of *federunt*, had renewed and ratified all the former statutes anent the trial and admission of the Lords, and ordained them to be observed; that since that time the troubles intervened, and continued long; so that prescription cannot be pretended for an abuse which had occasioned so great prejudice and clamour.

"It was carried, that the examination should be as it had been of late; and upon the report of Gosfoord and Craigie, appointed to examine them, they were admitted. Gosfoord was of opinion that there should be another way of trial."

Note 78. *Earl of Argyle.*

See Fountainhall, vol. 1. p. 160. The history of this eminent person is known; but it is not generally known that he was a man of pleasantry. He writes thus to Sir Archibald Primrose, Clerk-Register, 1st September 1663. "You have now,—in your hands, not for sculdudrie, the old fault of the house; else I should not interpose, he would make shift for friends; but for a less gentlemanly crime, theft; which, if he were guilty of, it needed not come this length: Pray, play him fair play, and make not him the only example of (for) suffering thieves to live near him." *MS. Advocates Library.*

Sir George Mackenzie, King's Advocate, insisted, that the Earl of Argyle should be executed, in consequence of the sentence formerly pronounced against him for explaining the *Test*. The secret reason of this was, That Sir George considered that sentence as so flagrantly unjust, that it could not fail of being reversed upon a change of ministry; whereas, if the Earl had been tried and condemned for rising in arms, the sentence could not in all probability have been reversed, unless upon a change of government. Of the truth of this anecdote the publisher has been assured by the relations of the noble family of Argyle.

Note 79. *Sir Alexander Seton of Pitmedden, removed, 1686.*

The account which he himself gives of this event is curious. "There were great pains taken to bring over Pitmedden to the Court-side; and the Lord Maitland, then Popish, and many others, were sent by the King's Commissio-

ner to deal with him; and further preferments were offered, on condition he would but forbear to argue for the penal laws. To which he answered, He was bound by the oath of Parliament to give faithful counsel, as well as faithful vote; and being impregnable, the letter [of dismissal] was produced against him; but not till he was acquainted of it, and had refused even to go to speak with the President of the Session, to whom the production of the letter was committed. And it is further to be observed, that after production divers persons of quality were set on him to come back to his place, on condition of compliance in time to come; and to this end the King, who had preferred Pitmedden to be a Lord of Justiciary for his parts, and suffering for the Royal Family, did forbear to present a successor to him in the Session till 5th February 1687; and the Convention of Estates, *anno* 1689, made this and some other overturning of Judges one of the causes of deposing King James from his royal dignity. Further, King James, after his exile, was heard, both in Ireland and France, to regret his carriage to Pitmedden, and to blame his Queen for it.

"St Bazil being invited by Modestus, by command of Valens the Emperor, to turn Arian, with a promise of rewards, and threatened with punishments if he returned not, answered, *Rewards were fit to tempt children, and threats to terrify cowards.*" Theodoret; Hist. Eccles. l. 4. c. 17. MS. *Notes on the Books of Sederunt.*

Lord Fountainhall observes, "That in the Parliament 1686, of all the Judges, Pitmedden only, like Athanasius, opposed the Court." Vol. 1. p. 447.

The King's letter to the Court of Session, intimating his dismissal, bears, That "we have removed him for reasons best known to ourselves."

Lord Pitmedden published a treatise of *mutilation and demembration*, subjoined to the second edition of Sir George Mackenzie's *Law of Scotland in Matters Criminal*, fol. 1699. This treatise shews that the author had read many books.

Note 80. *Sir George Gordon, President.*

A new commission, under the great seal, was at this time granted to the Lords. On this occasion Lord Pitmedden, MS. *notes on the Books of Sederunt*, observes, that "it makes their places, which, by act of James VI. were *ad vitam vel culpam*, become arbitrary; and therefore I opposed it, and afterwards found the fruits of it, when I was turned out of my place, as one of the number, for no other cause, but the opposition I made to toleration of Popish idolatry, in the Parliament holden *anno* 1686."

Note 81. *Sir David Falconer of Newton, President.*

He drew up *Decisions of the Court of Session*, from November 1681 to 9th December 1685, the very last day of his sitting in Court, *Fountainhall*, vol. 1. p. 382. They were published in 4to, 1701, by Mr John Spottiswoode advocate.

Note 82. *Sir George Nicolson of Kemnay.*

"Two Lords were appointed to examine him, and report; which they did; and he in the afternoon was sworn and received. Some doubted how this could be done, when the late act of federunt 1674 ordains he should sit a week in the Outer-house, &c. Some say, the King's letter expressly dispensed with this formality. [A mistake. The letter bears, *effectually to try*]. We saw it, in October and November 1681, passed over and neglected in the admission of Drumcairn and Boyne; only it may be said, they came in by virtue of a new commission from the King to the whole Lords." *Fountainhall*, vol. 1. p. 186.

Note 83. *Sir Patrick Lyon of Carfe.*

He had been a Professor of Philosophy in the Old College of St Andrew's, and afterwards Admiral-depute. He drew up the *Decisions of the Court of Session*, from 1682 to July 1687. *MS.*

Note 84. *Sir George Lockhart, President.*

January 17. 1658. He was appointed, during life, advocate to Oliver Cromwell.

"He was the most learned lawyer and the best pleader I have ever yet known in any nation; and he had all the lawyers almost in a dependence on him." *Burnet's History*, vol. 1. p. 370.

"Lockartius corpus alterum Juris Civilis, alterque Cicero dici poterat. Illi etiam peculiare erat argumenta sua eo ordine disponere, ut tanquam lapides in fornice alter alterum sustineret: quæ ex improvise, dum oraret, ei suggererentur, prompta solertia indicabat, aptisque locis disponebat. Nihil ab eo abscondit jurisprudentia, et quamprimum casus illi a cliente aperiretur, sua omnia, omniaque adversarii, argumenta retexebat, et in ipsam sententiam qua definienda erat causa, penetrabat. Iracundia, quæ alios oratores turbabat, eum tantum excitare solebat; vocem tamen latratu, vultumque rugis deformabat." *Sir George M'Kenzie.*

Note 85. *William Duke of Hamilton.*

"The Duke of Hamilton, during last vacation, was received as an extraordinary Lord of Session, in Queensberry's place; then laid aside. This practice came in with the seven months vacance, when Newton was made President, and Kemnay a Lord in his place, in May 1682: for they thought it not safe to delay their letters of admission till November. *Multa cadunt inter calicem supremaque labra.*" *Fountainhall.*

NOTES ON THE CATALOGUE OF

Note 86. *Mr Alexander Swinton of Merfington.*

On occasion of the two promotions at this time, *Fountainhall* says, vol 1. p. 505.
 "The King divided his favours between the Presbyterians and the Papists."
 "Lord Merfington was a zealous Presbyterian."

Note 87. *Sir John Maitland of Ravelrig.*

Afterwards Earl of Lauderdale.

Note 88. *Lord Polwarth.*

Afterwards Earl of Marchmont.

Note 89. *Sir Alexander Campbell of Cessnock.*

By the death of his elder brother, Lord Polwarth, afterwards Earl of Marchmont.

Note 90. *Mr James Elphinston of Coupar.*

Afterwards Lord Balmerino.

The Historical Notes could not with propriety be continued down to a more recent period. There is however one circumstance, relating to the late President Dundas, which the Publisher will be permitted to mention: President Dalrymple said, "I knew the great lawyers of the last age, Mackenzie, Lockhart, and my own father, Stair; Dundas excels them all."

ADDITIONAL NOTES.

Mr James Scott. Cat. P. 3.

Mr James Scott, grandson of Sir David Scott of Buccleugh, and ——— daughter of Thomas first Lord Somerville, was Provost of Corstorphine at the time of the Reformation.— He built a *manse* there for himself, and his successors, upon which his arms are still to be seen.—He was a man of great integrity and learning, and was made Clerk to the Treasury by King James V. He acquitted himself in his office of Lord of Session, with great reputation, as long as he lived. His elder brother Sir Alexander, dying when his son was under age, Mr James carefully educated him, and bred him to the study of the law, in which he was eminent, was made Clerk to the Parliament, and Director of the Chancery, "*pro toto tempore vite sue*," by a writ under the Great Seal, dated 17th October 1579. He was grandfather of Sir John Scott, the first of Scotstarvet. The Provost died *anno* 1563. *Douglas's Baronage of Scotland*, P. 221.

Mr Archibald Douglas, Parson of Glasgow. Cat. P. 5.

HE sold the manse of the Parsonage, which was situated a little to the east of the Bishop's Palace, to Captain Thomas Crawford of Jordanhill, a younger son of Kilbirny, *anno* 1580. Jordanhill afterwards sold it to Lord Boyd. *Mr Ure's History of Glasgow*, p. 51. *Vide Arnot's Crim. Trials*, p. 7. for his remarkable trial for the murder of King Henry.

Mr Thomas Hamilton. Cat. P. 7.

THIS person's designation was not Prestonfield, but Priestfield. The lands from whence he adopted it, were not known by the first mentioned name, till after they were purchased by Sir James Dick, Lord Provost of Edinburgh, (near the end of the reign of Charles II.) who, having likewise purchased some adjoining lands from the estate of the Prestons of Craigmillar, denominated all his contiguous property *Prestonfield*.

Sir James Oliphant of Newton. Cat. P. 9.

THIS family seems to have been very unfortunate: " Sir James Oliphant of Newton was created a Baronet 28th July 1629, and on the 3d November following made a Lord of Session. He murdered his gardiner by shooting him with a hagbut, and was, in 1632, expelled from the Bench. He had a son and successor, Sir James Oliphant of Newton, born 20th October 1612, who in a drunken fit stabbed his mother with a sword in her own house, so as to occasion her death. He thereupon fled into Ireland, disposed of all his landed
H property,

"property, and died in great penury and wretchedness." *Wood's Ancient and Modern State of the Parish of Cramond. Scotstarvet's Staggering State of the Scots Statesmen*, 139, 140. *Gilmour and Falconer's Decisions ad an.* 1663. *Register of Baptisms of Edinburgh.*

Sir James Foulis of Collington. Cat. P. 12.

HE was very instrumental in suppressing the riots of factious and seditious people in Edinburgh, for which, by an act of the Town Council, of date the 26th September 1677, a coat of armour for his good services was propined. *Memoirs of the Family of Sir William Binning of Wallisford, by his son Mr Charles Binning of Pilmure, Advocate.* P. 27. *MS. and Records of the Town Council of Edinburgh.*

Sir James Foulis, third Baronet of Collington, was appointed a Lord of Session in 1681, in the lifetime of his father; but he resigned with the rest of the Bench at the Revolution. In the beginning of the reign of Queen Anne, he was appointed Colonel of the Militia of Mid-Lothian, and one of the members of the Privy Council. He was also a member of the last Scottish, and first British Parliament. He married and had issue, and died in 1711.

Sir James had a long contested law-plea with his step-mother, who was also the mother of the first Earl of Cromarty. This Lady was provided by her contract of marriage with the liferent of whatever should be acquired during its continuance; but the Lords found, 29th July 1692, that as her step-son was provided in the estate of Collington, and the money she had brought, or had been acquired, was spent in discharging the debts upon that estate, she could have no right to any part of it.

Mr James Erskine of Grange. Cat. P. 16.

HE resigned his gown in 1734, in expectation of being appointed Secretary of State for Scotland, and he was afterwards elected member of Parliament for the Stirling district of Boroughs. But receiving no appointment to the office, he appeared again at the bar as a pleader, but retired in a short time to a private life.

Mr Andrew Fletcher of Milton. Cat. P. 16.

HE was appointed Lord Justice Clerk in 1735, on the demise of Mr Adam Cockburn of Ormiston, but resigned in 1748, and was succeeded by Mr Charles Erskine of Tinwald. He sat on the Bench 43 years.

Sir James Fergusson of Kilkerran. Cat. P. 16.

HE collected the Decisions of the Court of Session from 1738 to 1752, in the form of a Dictionary, which were published by his son in 1775.

Mr.

Mr Duncan Forbes of Culloden. Cat. P. 16.

HE was admitted to the bar in 1709, and was made King's Advocate in 1725. He represented the Inverness district of Boroughs from 1722 to 1737, when he was promoted to the Bench. During the troubles of 1715 and 1745, he conducted himself with such prudence and moderation, as to acquire the esteem of all parties; and his humane exertions contributed much to the re-establishment of peace and order to his country. On the Bench, he was distinguished for a deep knowledge of the Civil Law, and an anxious regard for the administration of strict justice. He was well skilled in the ancient languages, and particularly the Hebrew.

His leisure hours were chiefly employed in philosophical and theological studies; and there were published after his death, in 2 vols 8vo, "Thoughts on Religion Natural and Revealed;" "Reflections on the Sources of Incredulity with regard to Religion;" and "A Letter to a Bishop concerning some important discoveries in Philosophy," which are written in a flowing and oratorical style. The elegant Statue by Roubiliac, erected to his memory in the Outer Parliament House, by the Faculty of Advocates, is a remarkable testimony of the high estimation in which he was held by his countrymen. His character is given in the following inscription: "Duncan Forbes de Culloden, supremæ in civilibus curiæ Presidi, Judici integerrimo, civi optimo, præsæ virtutis viro, Facultas Juridica libens posuit, anno post obitum quinto G. N. 1752."

Mr Henry Home of Kames. Cat. P. 17.

HE was great grandson of Sir John Home of Renton, who held the office of Lord Justice Clerk 1663. His grandfather, Mr Henry Home, received the estate of Kames from his uncle George, brother of the Justice Clerk. The family of Renton is descended from that of the Earls of Home, the representatives of the ancient Princes of Northumberland, as appears from the records of the Lyon office.

Lord Kames was born in 1696. He never attended a public school, but was instructed in the ancient and modern languages, and in mathematical science, by a private tutor, Mr Wingate, a man of much ability and learning. He came to the bar in January 1723; and he seems to have pursued his professional studies with much ardour; for so early as 1728 he published a volume of *Remarkable Decisions*, in the preface to which, he pays some very elegant compliments to the then President Dalrymple. His *Essays upon several subjects in Law*, which appeared in 1732, exhibit great ingenuity and extensive views, and attracted the admiration of the lawyers. In 1741 his great work came out, viz. *Decisions of the Court of Session from its first institution to the year 1740, abridged and digested under proper heads in form of a Dictionary*; a most laborious work, and a valuable acquisition to every lawyer. His *Essays concerning British Antiquities*, he composed in the country, whither he retired during the distracted period of 1745 and 1746. His *Elements of Criticism* raised his reputation as a scholar, and a student in the *Belles Lettres*. By the *Essays on the Principles of Morality*.

Morality and Natural Religion, he excited general attention, and much controversy, having inculcated the doctrine of *philosophical necessity*. The same thing had indeed been done by Hobbes, Collins, Hume, and others; but the world supposed them professed infidels, and little wonder, though much indignation, was provoked by their writings. A number of criticisms appeared on this work; and some, confounding *necessity* with *predestination*, complimented the author on his masterly defence of the established faith. It is related, that a professor in a dissenting academy recommended the book to his pupils, as containing a complete vindication of the doctrines of Calvin, for which he was dismissed his office, and excluded from the communion of his sect.

His biographer asserts, that Lord Kaimes, like many other great and good men, continued a *Necessarian* till the day of his death; but that in a subsequent edition of his *Essays*, he altered his expressions, which, contrary to his intention, had given such general offence.

Amidst other studies, that of *Agriculture* occupied a portion of his time, and much information is to be found in his *Gentleman Farmer*. It is said he composed his *Loose Hints on Education* in his 84th year. He possessed a healthy and strong constitution, great vivacity of wit and of animal spirits. Although he attended conscientiously to his duty as a Judge, he found leisure for his various literary pursuits, by a proper distribution of his time. As he had no marked disease, but the debility naturally arising from extreme old age, he went to the Court a few days before his death, addressed the Judges separately, told them he was speedily to depart, and took a solemn and affectionate farewell.

He died on the 27th December 1782, in his 86th year.

His letters of correspondence with the celebrated Dr Berkeley, Bishop of Cloyne, Dr Butler Bishop of Durham, Dr Samuel Clarke, and other learned men, have been carefully preserved by his son Mr George Home Drummond. He married — Drummond, by whom he received the estate of Blair Drummond.

A Catalogue of his works may be with some propriety annexed.

- 1728. Remarkable Decisions of the Court of Session from 1716 to 1728. 1 vol. folio.
- 1732. Essays upon several subjects, viz. *Jus tertii*; *Beneficium cadendarum actionum*; *vincio vincetem*; and *Prescription*. 1 vol. 8vo.
- 1741. Decisions of the Court of Session, from its first Institution to the year 1740, abridged and digested under proper heads, in the form of a Dictionary, 2 vols folio.
- 1747. Essays upon several subjects concerning British Antiquities, 1 vol. 8vo.
- 1751. Essays on the Principles of Morality and Natural Religion, 1 vol. 8vo.
- 1757. The Statute Law of Scotland abridged, with Historical Notes, 1 vol. 8vo.
- 1759. Historical Law Tracts, 1 vol. 8vo.
- 1760. The Principles of Equity, 1 vol. folio.
- 1761. Introduction to the Art of Thinking, 1 vol. 12mo.
- 1762. Elements of Criticism, 3 vols 8vo.
- 1766. Remarkable Decisions of the Court of Session, from 1730 to 1752, 1 vol. folio.
- 1772. The Gentleman Farmer, being an attempt to improve Agriculture by subjecting it to the test of rational principles, 1 vol. 8vo.
- 1773. Sketches of the History of Man, 2 vols 4to.
- 1777. Elucidations respecting the Common and Statute Law of Scotland, 1 vol. 8vo.
- 1780. Select Decisions of the Court of Session from 1752 to 1768, 1 vol. folio.
- 1781. Loose Hints upon Education, chiefly concerning the culture of the Heart, 1 vol. 8vo.

In the *Essays Physical and Literary*, published at Edinburgh, are *Papers On the Laws of Motion, On the Advantages of Shallow Plowing, and On Evaporation*, all written by Lord Kaimes,

Mr

Mr Andrew Macdowal of Bankton. Cat. P. 17.

HE published an Institute of the Laws of Scotland, in 3 vols folio, which is now become scarce.

Mr Andrew Pringle of Alemore. Cat. P. 17.

HE was distinguished for his elegance as an orator, and a most dignified deportment as a Judge:—Mr Sheridan, in his Discourses upon English Oratory, thus speaks of his Lordship: "I met with a very extraordinary instance at Edinburgh, in a Lord of Session, who, though he had never been out of Scotland, yet merely by his own pains, without rule or method, only conversing with such Englishmen as happened to be there, and reading regularly with some of the principal actors, arrived even at an accuracy of pronunciation, and had not the least tincture of Scottish intonation."

Mr Robert Dundas of Arncliffe. Cat. P. 17.

OF this eminent man, a character is given by a modern Biographer of much ability and learning: "He was called to the bar in 1738; and in his earliest public appearances, gave ample proof of his inheriting, in their utmost extent, the abilities and genius of his family. His eloquence was copious and animated; in argument, he displayed a wonderful fertility of invention, tempered by a discriminating judgment, which gave, even to his unpremeditated harangues, a methodical arrangement: in consultation, he possessed a quickness of apprehension beyond all example; and his memory, which was most singularly tenacious, enabled him to treasure up, and to produce instantaneously, every case or precedent which was applicable to the matter before him."—"From the period of the institution of that Court over which he presided, no man ever occupied the President's chair, who combined in himself so many of the essential requisites for the discharge of that important office."

He was appointed Solicitor General in 1742, at the age of 29, under the Carteret administration; but on Mr Pelham's coming into power in 1746, he resigned.—In 1754 he was chosen Member of Parliament for the County of Edinburgh, and in 1755 was appointed his Majesty's Advocate, which office he held till he was advanced to the Bench. He died at Edinburgh, 13th December 1787, and his funeral was attended by the Lord Provost and Magistrates, the Principal and Professors of the University, Lords, Barons, Advocates, and Writers to the Signet, all in their gowns. A very solemn and affecting procession!

Mr Francis Garden of Gardenstone. Cat. P. 17.

HE was reckoned an ingenious and able pleader, and possessed a strong, clear and copious flow of language. He was appointed joint Solicitor General along with Mr James Montgomery, (now Lord Chief Baron of Exchequer,) in 1761. For a considerable period of his life, his attendance in Court was not regular,
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being

being unable from bodily infirmity to sit long without exercise or motion. Indeed, the bent of his mind seems to have changed to an object very different from the profession to which he had been bred. In 1768, he was seized with a rage (as he says himself) for establishing a manufacturing village at Laureneekirk in Kincardineshire, in which he was so successful, as, in the space of a dozen years, to see it contain 500 souls; and he obtained in 1779 a charter from the Crown, erecting it into a free and independent burgh of barony.

He succeeded to the fine estate of Troup by the death of his brother in 1785, and resigned his gown as one of the Commissioners of Justiciary in 1787, on receiving a pension of L. 200. His health declining, he went to the continent in 1786, where he resided near two years. After his return to Scotland in 1788, he seldom appeared upon the Bench at all.

There have been published, in 3 vols. "Travelling Memorandums, made in a Tour upon the Continent of Europe, in the years 1786, 1787, and 1788: By the Honourable Lord Gardenstone." To which are prefixed as a motto, these lines from Shakespeare:—

*Crowns in my purse I have, and goods at home,
And so am come abroad to see the world.*

These Memorandums are written in an easy, amusing style, and contain a good deal of information and advice useful to valetudinary travellers.

A few years before his death, he erected an elegant Temple to Hygeia at the Mineral Well of St Bernard's, on the Water of Leith, which cost him, it is said, near L. 2000.

A volume of "Miscellanies in prose and verse," has appeared with his name, but of which he was not the author, and they are otherwise unworthy of notice.

In a short Memoir of his Life, prefixed to the 3d vol. of his *Memorandums*, it is said, that it was in contemplation to have appointed him to the President's chair, had not bodily infirmities overtaken him; but the information upon which this is related is not alledged to be positive.

Sir David Dalrymple of Hailes. Cat. P. 17.

THIS great ornament of his country was the great-grandson of James first Viscount Stair, who was President of the Court of Session, and author of *Institutions of the Law of Scotland, and Decisions of the Court of Session from 1661 to 1681*.—The Viscount's fifth son, David, was created a Baronet in 1701, and was Lord Advocate from 1709 to 1720. He was father of Sir James Dalrymple, who was Auditor of Exchequer, and was father of Sir David Dalrymple, Lord Hailes.

He was born in 1726, and came to the bar in 1748. He was raised to the Bench in 1766, and was appointed a Lord of Justiciary in 1776.

"His knowledge of the laws was accurate and profound, and he applied it in judgment with the most scrupulous integrity. In his proceedings in the criminal court, the satisfaction he gave to the public could not be surpassed. His abhorrence of crimes, his tenderness for the criminals, his respect for the laws, and his reverential awe of the Omniscient Judge, inspired him, on some occasions,

"occasions, with a commanding sublimity of thought, and a feeling solemnity of expression, that made condemnation seem just, as the doom of Providence, to the criminals themselves, and raised a salutary horror of crimes in the breast of the audience.

"Conscious of the dignity and importance of the high office he held, he never departed from the decorum that becomes that reverend character; which indeed it cost him no effort to support, because he acted from principle and sentiment, both public and private. Affectionate to his family and relations, simple and mild in his manners, pure and conscientious in his morals, enlightened and entertaining in his conversation; he left society only to regret, that, devoted as he was to more important employments, he had so little time to spare for intercourse with them.

"He was well known to be of high rank in the republic of letters, and his loss will be deeply felt through many of her departments. His labours in illustration of the history of his country, and many other works of profound erudition, remain as monuments of his accurate and faithful research for materials, and his sound judgment in the selection of them." *Funeral Sermon by Dr. Carlyle.*

To this just tribute of the venerable Clergyman, may be added, (to use his Lordship's own words,) "A man he was, to be remembered, while virtue and literature are held in esteem among men." See *Annals of Scotland*, vol. 2, p. 146.

When the number and variety of the productions of his pen are considered, the passage of Pliny the younger, in his letter to Macer, when speaking of Pliny the elder, may justly be applied to the Scottish historian: "Nonne videtur tibi, recordanti quantum legerit, quantum scripserit, nec in officiis ullis, nec in amicitia principum fuisse?"

A list of his Lordship's works, as they are not generally known, is here subjoined, arranged in order of their publication.

SACRED Poems, or a Collection of Translations and Paraphrases from the Holy Scriptures, by various authors. Edinburgh 1751, 12mo. Dedicated to Charles Lord Hope; with a preface of ten pages.

The Wisdom of Solomon, Wisdom of Jesus the Son of Sirach, or Ecclesiasticus, 12mo. Edinburgh, 1755.

Select Discourses, (in number nine,) by John Smith, late Fellow of Queen's College, Cambridge, 12mo. pp. 291. Edinburgh, 1756; with a preface of five pages. "Many quotations from the learned languages translated,—and notes added, containing allusions to ancient Mythology, and to the erroneous philosophy which prevailed in the days of the author,—various inaccuracies of stile have been corrected, and harsh expressions softened."

▲ Discourse of the unnatural and vile Conspiracy attempted by John Earl of Gowry and his brother, against his Majesty's person, at St Johnstoun, upon the 5th of August 1600. No date of the republication, but the edition and notes supposed by Lord Hailes, 12mo. 1757.

▲ Sermon, which might have been preached in East Lothian, upon the 25th day of October 1761, on Acts xxvii. 1. 2. "The barbarous people shewed us no little kindness." Edinburgh, 1761.—A most affecting discourse, admirably calculated to convince the offenders!

Memorials and Letters relating to the History of Britain, in the reign of James I. published from the originals, Glasgow, 1762.—Addressed to Philip Yorke, Viscount Royston. "From a collection in the Advocates Library, by Balfour of Denmyln." The preface of four pages, signed Dav. Dalrymple.

The

- The works of the ever-memorable Mr John Hales of Eaton, now first collected together in 3 vols. Glasgow, 1765; preface of three pages.—Dedicated to William (Warburton) Bishop of Gloucester.—“The edition said to be undertaken with his approbation; obsolete words altered, with corrections in spelling and punctuation.”
- A specimen of a book entitled, “Ane Compendious Booke of Godly and Spiritual Sanga, collected out of sundrie parts of the Scripture, with sundrie of other Balates changed out of prophane Sanga, for avoiding of Sin and Harlotrie, with augmentation of sundrie Gode and Godly Balates, not contained in the first edition.—Edinburgh, printed by Andro Hart.” 12mo. Edinburgh, 1765. pp. 42; with a glossary of four pages.
- Memorials and Letters relating to the History of Britain in the reign of Charles I. published from the originals. Glasgow, 1766. pp. 189. Preface of six pages, signed Dav. Dalrymple. Chiefly collected by Mr Wodrow, author of the History of the Church of Scotland. Inscribed to Robert Dundas of Arncliffe, Lord President of the Court of Session.
- An account of the preservation of Charles II. after the Battle of Worcester, drawn up by himself; to which are added, his Letters to several persons. Glasgow, 1766, pp. 190. From the MSS. of Mr Pepys, dictated to him by the King himself, and communicated by Dr Sanby, Master of Magdalen College. The Letters are collected from various books; some of them now first published, communicated by the tutors of the Duke of Hamilton, by the Earl of Dundonald, &c. The preface of four pages, signed Dav. Dalrymple. Dedicated to Thomas Holles, Duke of Newcastle, Chancellor of the University of Cambridge.
- The secret Correspondence between Sir Robert Cecil and James VI. 12mo. 1766.
- A Catalogue of the Lords of Session, from the Institution of the College of Justice, in the year 1532, with Historical Notes. *Suum cuique—respondet posteritas.* Edinburgh, 1767. 4to.
- The private Correspondence of Dr Francis Atterbury, Bishop of Rochester, and his friends, in 1725, never before published. Printed in 1768, 4to. A fac-simile of the first from Bishop Atterbury to John Cameron of Lochiel, to prove their authenticity.
- An Examination of some of the arguments for the High Antiquity of *Regiam Majestatem*; and an Inquiry into the authenticity of the *Leyes Malcolmi*; by Sir David Dalrymple, 4to. Edinburgh, 1769.
- Historical Memoirs concerning the Provincial Councils of the Scottish Clergy, from the earliest accounts to the æra of the Reformation; by Sir David Dalrymple. Edinburgh, 1769. 4to.—*Nota.* Having no high opinion of the popularity of his writings, he prefixes to this work the following motto, “*Si delectamur quum scribimus, quis est tam invidus qui ab eo nos abducatur? fin laboramus, quis est qui alienæ modum statuat industrie?*” *Cicero.*
- Canons of the Church of Scotland, drawn up in the Provincial Councils held at Perth, A. D. 1242, and 1269. Edinburgh, 1769, 4to. pp. 48.
- Ancient Scottish Poems, published from the MS. of George Bannatyne. 1568. Edinburgh, 1770. 12mo. Preface six pages. Poems pp. 221. Very curious notes pp. 91. Glossary, and list of passages and words not understood, pp. 14.
- Remarks on the History of Scotland, by Sir David Dalrymple. Edinburgh, 1772. Inscribed to George Lord Lyttelton, in nine chapters, pp. 284. 12mo.
- Huberti Langueti Epistolæ ad Philippum Sydneium Equitem Anglum, Accurante D. Dalrymple de Hailes, Eq. Edinburgh, 1776, 8vo. Inscribed to Lord Chief Baron Smyth.
- Annals of Scotland, from the Accession of Malcolm III. surnamed Canmore, to the Accession of Robert I. By Sir David Dalrymple. Edinburgh, 1775, 4to.
- Annals of Scotland, from the Accession of Robert I. surnamed Bruce, to the Accession of the House of Stewart. By Sir David Dalrymple. Edinburgh, 1779, 4to.
- Account of the Martyrs of Smyrna and Lyons, in the 3d century; 12mo. with explanatory notes, Edinburgh, 1776. Dedicated to Bishop Hurd. This is a new and correct Version of two most ancient Epistles; the one from the Church at Smyrna to the Church at Philadelphia; the other from the Christians at Vienne and Lyons, to those in Asia and Phrygia; their antiquity and authenticity are undoubted.—Great part of both is extracted from Eusebius's Ecclesiastical History.—The former was first completely edited by Archbishop Usher. The author of the notes says of them, with his usual and singular modesty, “That they will afford little new or interesting to men of erudition, though they may prove of some benefit to the unlearned

unlearned reader." But the erudition he possessed in these branches is so rare, that this notice is unnecessary. They display much useful learning and ingenious criticism, and breathe the most ardent zeal, connected with an exemplary knowledge of Christianity.

N. B. This is the First Volume of the Remains of Christian Antiquity.

Remains of Christian Antiquity, with explanatory notes. Volume II. Edinburgh, 1778, 12mo. Dedicated to Dr Newton, Bishop of Bristol. This volume contains, The trial of Justin Martyr and his companions: Epistle of Dionysius, Bishop of Alexandria, to Fabius Bishop of Antioch. The trial and execution of Cyprian, Bishop of Carthage. The trial and execution of Fructuosus Bishop of Tarragona in Spain, and of his two deacons, Augurinus and Eulogius. The Maiden of Antioch. These are all newly translated by Lord Hailes, from Ruinart, Eusebius, Ambrose, &c. The notes and illustrations of this volume display a most intimate acquaintance with antiquity, great critical acumen, both in elucidating the sense and detecting interpolations; and above all, a fervent and enlightened zeal, in vindicating such sentiments and conduct, as are conformable to the word of God, against the sarcasms of Mr Gibbon.

Remains of Christian Antiquity, Volume III. Edinburgh, 1780. Dedicated to Thomas Balguy, D. D. It contains the History of the Martyrs of Palestine in the 3d century, translated from Eusebius. Notes and illustrations, in which Mr Gibbon again comes, and more frequently, under review.—The partiality and misrepresentations of this popular writer are here exposed in the calmest and most satisfactory manner.

Ostavius, a Dialogue, by Marcus Minucius Felix; Edinburgh, 1781. Preface pp. 16.—The speakers are Cœcilius a Heathen, Ostavius a Christian; whose arguments prevail with his friend to renounce Paganism, and become a Christian proselyte. Notes and illustrations, pp. 120.

Of the manner in which the Persecutors died. A treatise; by L. C. F. Lactantius. Edinburgh, 1782. Inscribed to Dr Porteus Bishop of Chester, (present Bishop of London.) Preface pp. 37. in which it is proved that Lactantius is the author. Notes and Illustrations.

L. C. F. Lactantii Divinarum Institutionum Liber Quintus, seu de Justitia, 1777.

Disquisitions concerning the Antiquities of the Christian Church. Glasgow 1783. Inscribed to Dr Halifax, Bishop of Gloucester.

It seems very probable that the close attention which Lord Hailes appears to have given to such subjects, was in some measure the effect of the mistakes and partiality of Gibbon. In no one work from 1776, the date of Mr Gibbon's first publication, has he omitted to trace this unfair and insinuating author; but in 1786, he came forth of set purpose with the most able and formidable reply which he has received, entitled, "An Inquiry into the Secondary Causes which Mr Gibbon has assigned for the rapid growth of Christianity, by Sir David Dalrymple Edinburgh, 1786; gratefully and affectionately inscribed to Richard (Hurd) Bishop of Worcester, 4to. In five chapters."

Sketch of the Life of John Barclay, author of *Argenis*.—4to. 1786.

Sketch of the Life of John Hamilton, a Secular Priest, 4to, (one of the most savage and bigotted adherents of Popery, who lived about A. D. 1600.)

Sketch of the Life of Sir James Ramsay, a General Officer in the Armies of Gustavus Adolphus King of Sweden, with a head.

Life of George Leslie (an eminent Capuchin Friar, in the early part of the 17th Century,) 4to.

Sketch of the Life of Mark Alexander Boyd, 4to.

These lives were written and published as a specimen of the manner in which a *Biographia Scotica* might be executed; and it is likely that Lord Hailes selected purposely the least interesting.

The opinions of Sarah Duchess Dowager of Marlborough, published from her original MSS. 1788, 12mo. (With a few notes by Lord Hailes, in which he corrects the splenetic partiality of her Grace.)

The Address of Q. Sept. Tertullian to Scapula Tertullus, Proconsul of Africa, translated by Sir David Dalrymple, 12mo. Edinburgh, 1790. Inscribed to Dr John Butler, Bishop of Hereford.

This address contains many particulars relating to the Church after the 3d century. The translator has rejected all words and phrases of French origin, and written intirely in the Anglo-Saxon dialect. In the course of the notes, many obscurities of the original, not adverted to by other commentators, are explained. Some strange inaccuracies of Mr Gibbon are also detected, not included in the misrepresentations of his two famous chapters.

This was the last work of this truly learned, respectable, and useful person. Whether he has left any finished works, is known only to his friends. This much only has been heard from good authority, that he was engaged in pursuits to examine the authenticity of the books of the New Testament. The result is said to have been, that he discovered every verse contained in it, with the exception of two or three, in the writings of the first three centuries.— Indeed this seems to have been an object in all his works; for at the end of each of his translations and editions of the primitive Christian Writers, a table is given of passages quoted or mentioned by them.

Lord Hailes also wrote Nos. 140. 147. 204. of the work entitled the *World*, published by Mr Moore in 1755 and 1756; and Nos. 21. 46. 56. 62. 75. 86. 97. 98. of the *Mirror*. The additional Case for Elizabeth, Countess of Sutherland, was likewise the composition of his Lordship, though it bears the names of Alexander Wedderburne, (now Lord Chancellor,) and Sir Adam Ferguson. It ought not to be regarded merely as a law paper of great genius, but as a treatise illustrative of the history and antiquity of many important points of family succession.

Mr Thomas Millar of Barskimming. Cat. P. 17.

HE was the second son of Mr William Miller, Writer to the Signet, who was second son of Mr Matthew Miller of Glenlee. He was born in 1717, and came to the bar in 1742. In 1748 he was appointed Stewart of Kircudbright, which office he resigned in 1755, and was named Solicitor of Excise, an office in those days generally held by a lawyer. In 1760, he was appointed his Majesty's Advocate, and in 1761, was chosen Member of Parliament for the Dumfries district of boroughs. In 1766, he was raised to the Bench, and to the office of Lord Justice Clerk. On the death of his brother, in December 1780, his Lordship changed his title of Barskimming to that of Glenlee, according to the directions of his father's entail. He was promoted to the President's chair in January 1788, on the demise of President Dundas, and was farther honoured with the dignity of a Baronet of Great Britain, (by patent dated 19th February 1788), under which title he is placed in the Catalogue. But these honours he did not long enjoy: "He died on the 27th September 1789, in the 72d year of his age, leaving no good man his enemy, and attended with that sincere regret, which only those can hope for, who have occupied the like important stations, and acquitted themselves as well." *Anon. Biog.*

He was esteemed a sound lawyer, and his decisions were given on such sure grounds, as to be seldom reversed by the Court.

His only son, now Sir William Miller, has likewise had the honour of a seat on the Bench (16th May 1795), on the decease of Lord Henderland.

Mr Alexander Lockhart of Livingston. Cat. P. 17.



HE practised at the bar 53 years, with the highest reputation as a lawyer. The labours of his pen were almost incredible, even to those who knew the strength of his constitution. He seemed to think he could not work too hard for his client. During the winter Session for a long period of years, he always rose at four o'clock in the morning.

It is believed he had declined a seat on the Bench, before his advanced age induced him to accept it on the death of Lord Strichen. He was then in his 75th year. It is to be here observed, that no vacancy happened on the Bench from the death of Lord Milton in 1767, to that of Lord Strichen in 1775; a period of eight years, and the longest to be found in the Catalogue. Lord Strichen had sat 45 years.

ORDINARY ADVOCATES SINCE THE INSTITUTION
OF THE SESSION.

A
C A T A L O G U E
OF THE
FACULTY OF ADVOCATES,
FROM THE
INSTITUTION OF THE COLLEGE OF JUSTICE,
TO THE
REVOLUTION IN 1688.



ORDINER ADVOCATTS SINCE Y^e INSTITUTION OF THE SESSION.*

<i>Dates.</i>	<i>Names.</i>	<i>Dates.</i>	<i>Names.</i>
7. May 1532.	Mr Robert Galbraith.	20. Dec. 1580.	Mr John & David M ^c Gills, sons to umq ^l e Mr James M ^c Gill, Clk Reg ^r .
	Mr Robert Lefslly.	Eodem die.	Mr Alexander King, son to Mr Alex- ander King, advocate.
	Mr Henry Spittell.	17. Mar. 1584.	Mr John Hallyday.
	Mr John Lethem.	1. Nov. 1587.	Mr Thomas Hamilton, appeirand of Preiftfield.
	Mr Henry Lauder of St Germaines.	3. July 1587.	Mr Alexander Sym.
	Mr Thomas Kincraigie.	9. July 1594.	Mr Thomas Nicolfone.
	Mr Thomas Majoribanks of Ratho.	14. July 1596.	Mr Robert Lermonth.
	Mr William Johnfloun.	2. Dec. 1597.	Mr John Sharp, younger.
16. Nov. 1537.	Mr Henry Balnevis.	25. Jan. 1604.	Mr Alexander Morifon.
	Mr John Bethony.	9. March 1604.	Mr James Sandilands.
	Mr Hugh Rigg.	7. Feb. 1605.	Mr Thomas Hope.
	Mr George Strang.	28. Feb. 1605.	James Hay.
	Mr Thomas M ^c Alzean of Cliftounhall.	6. Jan. 1607.	Laurence Scott.
	Mr James Cairnmuir.		Alexander Cunyngham.
9. Jan. 1561.	Mr John Sharp.	4. Jan. 1607.	Mr Archibald Aitchieson.
12. March 1570.	Mr Henry Balfour.	23. Jan. 1607.	Mr James Lautie.
16. March 1570.	Mr W ^m . Scott.	6. Jan. 1608.	Mr John Rollock.
18. Jan. 1573.	Mr Oliver Colt.	6. Feb. 1608.	Mr Thomas Craig, deceast.
8. Nov. 1574.	Mr William Hart.	1. March 1608.	Mr John Belfahis.
19. March 1574.	Mr John Skeen.	30. May 1609.	Mr David Prymrofe.
11. Jan. 1575.	Mr Patrick Vans of Barmbaro.		
24. March 1575.	Mr John Raffell.		
28. May 1579.	Mr John Arthur.		

* Taken verbatim from Aikman's Manuscript Collections, Advocates Library.

ORDINER ADVOCATTS.

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Dates.	Names.	Dates.	Names.
17. Jan. 1611.	Mr Roger Mowat.	12. June 1656.	Mr Robert Burnet, younger.
10. Nov. 1612.	Mr Thomas Nicolson.	18. June 1657.	John Greg.
	Mr John Russell.	18. Jan. 1659.	Mr George M ^c Kenzie, after Lord Ad- vocat.
	Mr James King.	5. June 1661.	Mr James Winraham.
6. Nov. 1613.	Mr John Sandilands.	Ditto.	Weare readmitted the Advocats after- mentioned, upon y ^r subscribing the oath of alledgiance, the acknow- ledgement of his Majesty's prero- gative, and y ^r oath <i>de fidei</i> , q ^{ch} they all took upon y ^r knees.
1. Dec. 1613.	Mr Luis Stewart.		Mr Andrew Gilmour.
14. Dec. 1614.	Mr Robert Nicolson.		Mr John Cunyngham.
14. June 1615.	Mr Maj. Forsyth.		S ^r Gilbert Stewart.
2. Feb. 1617.	Mr Robert Burnet.		James Chalmers.
9. Dec. 1617.	Mr James Baird.		Mr Robert Burnet.
9. Jan. 1618.	Mr W ^m . Oliphant.		Mr Thomas Baird.
6. July 1622.	Mr Robert Burnet.		Mr Alexander Spottwood.
18. Dec. 1654.	Mr Nathaniell Fyfe.		Mr Nathaniell Fyfe.
2. Jan. 1655.	Mr Alexander Davidfon.		William Brodie.
2. Feb. 1655.	Mr John Hamilton, Shireff deput of Midlothian.	5. June 1661.	} Readmitted. } Mr Alexander Nairn. Mr George MacKenzie. Mr William Bethune. Mr Walter Cant. Mr James Corfer. William Lyell, & Mr James Rochhead, after Com. Clerk of Reg ^r .
20. Feb. 1655.	Mr John Smith.		
23. Feb. 1655.	Mr William Pearfone of Balmadis.		
15. June 1655.	Mr Thomas Hamilton.		
26. June 1655.	Mr William Morifone.		
6. July 1655.	Mr Arthur Gordone.		
23. July 1655.	Mr George Ramsay.		
4. Jan. 1656.	Mr John Lockhart, after Lord Castlehill.		
8. Jan. 1656.	George Lockhart, after Lo: Prefi- dent.		
17. Feb. 1656.	Thomas Forbes.		
19. Nov. 1656.	William Lyell.		
22. Nov. 1656.	Mr Robert Nairn, Lo. Strathuod's b ^r .		
2. Dec. 1656.	Mr Robert Meldrum.	9. June 1661.	James Brown.

ORDINER ADVOCATTS.

<i>Dates.</i>	<i>Names.</i>	<i>Dates.</i>	<i>Names.</i>
9. June 1661.	William Zeaman. Mr Robert Hay.	10. Dec. 1661.	Mr Alexander Scotson, after Lo. Pitt- medden.
12. June 1661.	Mr Thomas Murray, after Lo. Glen- doig, & Cl. Reg ^r . Mr Thomas Henderfon.	14. Dec. ditto.	Mr Thomas Murray, younger, Lord Register, 22d January 1662.
14. June 1661.	Mr Andrew Birnie, after Lo. Saline.	22. Jan. 1662.	Mr William Cunyngbam.
15. June 1661.	Mr William Ballantyn.	26. Feb. 1662.	Mr Alexander Munroe, Commisfer.
18. June 1661.	Mr John Elliot, elder, readmitted.	4. June 1662.	Mr Alexander Ofwald.
20. June 1661.	Mr Thomas Nicolfone. Mr Arthur Gordon, readmitted.	5. June 1662.	Sir Andrew Dick, readmitted.
21. June 1661.	Mr David Balfour, after Lo. Forrot.	13. Nov. 1662.	Mr John Wedderburne, afterw. Clerk of y ^e bills.
21. June 1661.	Mr David Dunmuire.	Eodem die.	William Burnet, Sollicitor.
25. June ditto.	Mr John Muirhead, readmitted. Ditto. Mr William Dundas. Ditto. Mr Roger Hoge, after Lo. Harcarfe.	9. Dec.	Mr John Craig.
17. June 1661.	Mr David Thoires.	23. Dec. 1662.	Mr James Hamiltone.
29. June ditto.	Mr David Falconer, after Lo. New- town, & thereafter Lo. President.	22. Jan. 1663.	Mr John Elliot, younger.
3. July ditto.	Mr John Ramfay, readmitted.	30. Jan. ditto.	Mr William Clerk.
4. July ditto.	Mr Thomas Wallace, readmitted, after Lo. Craigie.	11. June 1663.	Mr Francis Durhame.
16. July ditto.	George Lockhart, readmitted. Ditto. Mr John Colvill.	31. July 1663.	Mr William Balyie.
18. ditto.	Mr David Herriot, younger.	26. Nov. 1663.	Mr James Hunter.
20. July ditto.	Mr Alexander Straiton.	12. Feb. 1664.	Mr William Moir.
27. July ditto.	Mr George Nicolfone, after Lord Kem- nay.	10. June 1664.	Mr Walter Pringle.
30. July ditto.	Mr William Kintoir.	4. June 1664.	Archibald Hope.
28. Nov. 1661.	Mr James Stewart.	7. July 1665.	Mr James Daes.
		7. Dec. 1665.	James Douglas, brother to the Earl of Queensberrie.
		3. Jan. 1666.	Mr Robert Dickson, by bill.
		4. Jan. ditto.	William Riddell, son to Sir William of that ilk.
		9. ditto.	Mr Alexander Anderstone.
		6. Feb. 1666.	Mr Roderick Mackenzie.

ORDINER ADVOCATS.

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Dates.	Names.	Dates.	Names.
20. June 1666.	Mr John Stewart.	14. Feb. 1671.	Mr George Bannerman Elfeck's bro- ther.
22. June 1666.	Mr Patrick Meine.	27. June 1671.	Mr Richard Douglass.
5. July 1666.	Mr John Balyie.	11. July 1671.	Mr Patrick Lyon, after Lo. Carle.
10. Nov. 1666.	Mr Francis Hay.	27. July 1671.	Mr Alexander Swinton.
13. Nov. 1666.	Mr John Wishart, Mr James Aikenhead, }	5. Jan. 1672.	Mr Robert Winraham.
	Commiffars.	16. Jan. 1672.	Mr William Aikman, Carnie's son.
24. Jan. 1667.	Mr Patrick Hume.	24. Jan. 1672.	Mr Thomas Buik.
26. Jan. 1667.	Mr Archibald Wilkie.	31. Jan. 1672.	Mr James Birsbane.
2. Feb. 1667.	Mr John Kincaid.	28. Feb. 1672.	Sir John Dalrymple, President's son, after K. Advocate.
11. July 1667.	Mr Robert Colt.	21. June 1672.	Mr Robert Rennet, Grubet's brother.
5. Dec. 1667.	Mr John Inglis, by bill.	17. Dec. 1672.	Mr Roderick Mackenzie.
21. Dec. 1667.	Mr Edward Wright.	18. Dec. 1672.	Mr Colin Mackenzie, Lo. Advocat's brother.
7. Feb. 1668.	Sir George Gordon of Haddo, after Lo. then President, and afterwards Lo. Chancellor.	2. Jan. 1673.	Mr David Cunnyngname.
5. June 1668.	Mr John Lauder.	5. Dec. 1673.	Mr Alexander Campbell.
17. June 1668.	George Gihfone.	10. Ditto.	Mr James Borthwick.
ult. June 1668.	Mr David Dewar.	6. Jan. 1674.	Mr James Falconer.
9. Dec. 1668.	Mr Laurence Charteris.	11. Feb. 1674.	Mr James Grant.
8. June 1669.	James Fowles, Colingtown's son, after Lord Reidford.	19. Ditto.	Mr James Gzem.
9. June 1669.	Mr James Weems, Lo. Lathocker's son.	Ditto.	Mr George Dickson.
11. June 1669.	Mr W ^m . Montgomery, son to Sir James Montgomery.	10. June 1674.	Mr Robert Buchanan.
18. Nov. 1669.	Mr John Murray, Sir James' son.	19. & 20. Jan. 1675.	Mr James Binning & Mr Robert Deans readmitted 25. June ditto.
30. Nov. 1669.	Mr James Ross.	12. Feb. 1675.	Mr John Colvill, } Readmitted.
9. June 1670.	Mr Robert Stewart, Sherwood's son.	20. Ditto.	Mr James Brown, }
8. July 1670.	Mr Andrew Beton, Balfour's son.	25. June 1675.	Mr James Dalrymple, President's son, Clerk Sell.
19. July 1670.	Mr Hugh Wallace, the Bishop of the Isles son.		Mr David Dunmuir, Mr Robert Deans.

ORDINER ADVOCATTS.

<i>Dates.</i>	<i>Names.</i>	<i>Dates.</i>	<i>Names.</i>
25. June 1675.	Mr James Borthwick, Mr James Fairbairn, readmitted.	8. Jan. 1676.	Mr Rorie Mackenzie, younger,
24. & 25. ditto.	Mr Rorie Mackenzie & Mr Robert Buchanan, readmitted.		Mr William Hamilton,
29. June 1675.	Sir George Mackenzie & Mr Coline his brother, readmitted.		Mr John Kincaid, } Readmitted.
3. July ditto.	Mr Alex ^r . Campbell, readmitted.		Mr Robert Bennet,
7. July ditto.	Mr Alexander Anderson, Mr James Grant, and Mr Robert Stewart, readmitted.		Mr James Hunter,
9. ditto.	Mr Patrick Smith, readmitted.		Mr William Balzie,
31. ditto.	Sir Colin Campbell, readmitted.		Mr William Clerk, } Readmitted.
21. Dec. 1675.	Mr Charles Gray, brother to my Lord Gray.		Mr Da. Cunyngham,
7. Jan. 1676.	Sir George Lockhart, } Mr John Ellys, } Sir John Cunyngham, } Mr Hugh Wallace, } Sir Robert Sinclair, } Mr William Weir, } Mr W ^m . Monypenny, } Mr Edward Wright, } Mr Archibald Hope, } Mr William Dundas, }		Sir John Harper, } Mr Richard Douglas, } Mr Walter Pringle, } Mr William Moire, } Mr John Lauder, } Mr David Dewar, } Mr William Murray, } Mr James Falconer, } Mr George Bannerman, } Mr John Inglis, }
3. Jan. 1676.	Mr John Bailzie, } Mr George Giblon, } Mr George Dickfon, } Mr Thomas Lermont, }	4. Feb. 1676.	Mr William Fletcher.
			B. Argyll's son.
		9. ditto.	Mr Alexander Malcolm, Balbedeis son, afterwards Lo. Lochore.
		8. Nov. 1676.	Mr Andrew Burnet, p ^r petition.
		8. Dec. 1676.	Mr Patrick Scott of Ancrum.
		19. Dec. ditto.	Mr Thomas Skeen.
		13. Feb. 1677.	Ditto Mr W ^m . Paterfon, Regent, p ^r bill, after Cl. Council.

ORDINER ADVOCATTS.

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<i>Dates.</i>	<i>Names.</i>	<i>Dates.</i>	<i>Names.</i>
23. Feb. ditto.	Mr Hugh Dalrymple, President's son,	14. Jan. 1681.	Mr James Balfour, son to the Lo. For-
6. June 1677.	Mr Michael Lumisdane.		rept, p ^r bill.
8. June ditto.	Mr George Campbell of Carlgowrie.	20. ditto.	Mr John Gordon, son to Sir Ludovick-
13. June ditto.	Robert Hamilton, formerly Clerk, p ^r		Gordon.
	bill.	28. ditto.	Mr William Gordon, upon petition.
21. June ditto.	Mr James Alexander of Kinglassie.	1. Feb. 1681.	Mr John Ferguson.
13. Nov. ditto.	Mr Robert Cook.	5. Nov. 1681.	Mr Robert Stewart, jun ^r .
28. ditto.	Mr John Menzies.	20. Dec. 1681.	Mr John Mackenzie.
5. Dec. ditto.	Mr Robert Blair.	22. Dec. 1682.	Mr Alexander Hay.
19. Dec. ditto.	Mr William MacColloch.	26. Jan. 1683.	Mr Robert Norvell.
4. Jan. 1678.	Mr David Forbes.	15. Feb. 1683.	Mr David Drummond.
10. ditto.	Mr Patrick Lyon, junior.	20. Feb. 1683.	Mr James Stevinsope.
19. Nov. 1678.	Mr George Alexander.	2. March 1683.	Mr Aeneas MacPherson, p ^r bill.
28. ditto.	Mr James Boyce.	30. March 1683.	William Gordon, p ^r bill.
19. June 1679.	Robert Nairne.	6. Nov. 1683.	Mr Alexander Haigens, p ^r bill.
18. July 1679.	William Wallace, the Justice Clerk's	7. Nov. 1683.	Patrick Don.
	eldest son.	16. Nov. 1683.	Mr Alexander Drummond.
17. Dec. 1679.	Mr Mark Lermouth.	8. Jan. 1684.	Mr Alexander Gordon.
3. June 1680.	Mr Robert Nairne.	17. Jan. 1684.	Mr James Rentowne.
12. June 1680.	Mr James Deane, Commissar of Edin ^r .	27. March 1684.	George Morison, p ^r bill.
28. July 1680.	John Hay of Murie, upon petition.	6. Nov. 1684.	Mr James Nasemith.
30. July ditto.	Sir John Maitland, the Sh. Depute's	8. Nov. 1684.	William Scott of Bavila.
	second son, p ^r bill.	7. Nov. 1684.	Mr Archibald Colquhoun, who died
31. July 1680.	Sir William Baird, my Lo. Newbyth's		July 1687.
	son, p ^r bill.	2. Dec. 1684.	Mr James Lesly.
19. Nov. 1680.	Mr William Hogg, p ^r bill.	10. Dec. 1684.	Mr David Drummond, p ^r Bill.
13. Jan. 1681.	Mr James Enstruther, son to Sir Philip	14. Jan. 1685.	Mr Alexander MacLeod.
	of y ^r Ilk, after Clerk to the Bills.	16. Jan. 1685.	Mr James Ogilvie.

ORDINER ADVOCATTS.

<i>Dates.</i>	<i>Names.</i>
21. Jan. 1685.	Mr John Ramfay.
20. Feb. 1685.	Mr James Stewart.
25. March 1685.	Sir James Stewart, Sheriff of Bute.
27. March 1685.	Mr Douglas p ^r Bill.
28. March 1685.	Mr John Baird p ^r Bill.
13. Jan. 1686.	Mr George Milne.
20. Jan. 1686.	Mr Alexander Fergusson.
2. Feb. 1686.	Mr Thomas Burnet.
19. Feb. 1686.	Mr Robert Frazer.
23. Feb. 1686.	Archibald Cockburn younger of Langtown.
Eod. die.	Mr John Richardson, p ^r Bill.
4. March 1686.	Mr Archibald Sinclair.
7. March 1686.	Andrew Bruce younger of Earleshall
20. March 1686.	Mr Alexander Crawford, p ^r Bill.
9. Nov. 1686.	W ^m . Cockburn, younger of that ilk.
6. Feb. 1686.	Mr Robert Frazer.
4. Dec. 1686.	Daniel Lockhart.
29. Jan. 1687.	Mr James Forrester.
12. Feb. 1687.	Mr Robert Beaton.

<i>Dates.</i>	<i>Names.</i>
24. Feb. 1687.	George Brown, younger of Colstown.
18. June 1687.	Alexander Wedderburne.
Ditto.	Mr William Calderwood.
12. Nov. 1687.	Thomas Nicolson. James Oliphant.
3. Dec. 1687.	Mr John More.
10. Dec. 1687.	Mr Walter Pringle.
Ditto.	Thomas Wallace.
1. Feb. 1688.	Mr John Murray.
3. Nov. 1688.	Mr David Dalrymple.
11. Nov. 1688.	Mr John Chrifty.
8. Dec. 1688.	Mr William Gray.
	Mr Robert Alexander.
	Mr William Brodie.
	Mr James Robertson.
	Mr Archibald Hamilton.
	Mr Francis Grant.
	Mr James Home.
	Mr James Gelly.
	Mr John Frank.



THE
PRIVATE CORRESPONDENCE

FRANCIS ATTERBURY

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]



[Faint, mostly illegible handwritten text at the bottom of the page, possibly a signature or additional notes.]

Ther: being matters of consequence in which I should
be extremely glad to have your Opinion & Advice, together
with that of some others, I send my Son^t to beg of favor
of you to come to Paris if you can, & as soon as you can pos-
sibly, there being no time to be lost in y^e case. If I can
see you here tomorrow morning, be pleas'd S^r to bring your
Son along with you, & to desire S^r Hector Machian, that I
may have y^e favor of seeing him also. I would not give
you this trouble, if I were able my self to wait on you at
S^t. Germain. I am, with great regard

Saturday
~~Sunday~~

Your very faithful & most
Obedient Servant.

Fra. Rossini

T H E
P R I V A T E C O R R E S P O N D E N C E
O F

D r F R A N C I S A T T E R B U R Y ,
B I S H O P o f R O C H E S T E R ,

A N D H I S F R I E N D S ,

I n 1 7 2 5 .

N E V E R B E F O R E P U B L I S H E D .

Printed in the Year 1768.

THE

PRIVATE CORRESPONDENCE

OF DR. FRANKLIN A. TERRY

BISHOP OF ROCHESTER

AND HIS FRIENDS

IN 1725

NEVER BEFORE PUBLISHED.



Printed in the Year 1768.

[iv]

ADVERTISEMENT.

Bishop Atterbury, in one of his private letters to his friend Mr Pope, observes, that the world mistook his character. "To be quiet," says he, "and live to myself, with the few, the very few friends I like, is the point, the single point, I now aim at; though I know, the generality of the world, who are unacquainted with my intentions and views, think the very reverse of this character belongs to me." *Letter to Mr Pope, 6th April 1722.*

With what equanimity Bishop Atterbury endured the rigors of his exile; with what unremitting ardor he loved, and revered, and even idolized the *British Constitution*, will appear from another private letter, addressed to the same friend, *22d November 1732.*

"After all, I do, and must love my country, with all its faults and blemishes. Even that part of the constitution which wounded me unjustly, and itself through my side, shall ever be dear to me. My last wish shall be, like that of Father Paul, *Esto perpetua!* and when I die at a distance from it, it will be in the same manner as Virgil describes the expiring Peloponesian,

"Sternitur, et dulces moriens reminiscitur Argos."

Will not every reader of the smallest discernment pronounce those letters to be the genuine effusions of a good heart? He, whose single aim was to live to himself, in the society of a few chosen friends, could never have sacrificed his learned leisure to a turbulent faction: He who, even in exile, loved the constitution of his native country, could never have engaged in dark and dangerous conspiracies against that constitution which he loved.

Bishop

Bishop Atterbury was sentenced to perpetual exile, upon the suspicion of having acted a part in the service of the Pretender. To his last moments he appears deeply sensible of the injustice of that sentence: He never would have justified it, by acting that part, for the mere suspicion of which he had so severely suffered: And least of all would he have done this, with the view of promoting the interests of one, whom, by many voluntary and solemn oaths, he had so often abjured.

Whether this be the language of declamation, or of simple truth, the reader will determine, after perusal of the following papers.

By what accident they have been preserved, the publisher does not know: By what means they are now brought to light, he does not think himself at liberty to explain. As the engraved specimen of Bishop Atterbury's hand-writing establishes their authenticity, any further inquiry concerning them is superfluous.

[2]

THE
PRIVATE CORRESPONDENCE

OF
Bishop ATTERBURY and his FRIENDS,

In 1725.

BISHOP of ROCHESTER

TO

JOHN CAMERON of LOCHIEL.

SIR,

THERE being matters of great consequence on which I should be extremely glad to have your opinion and advice, together with that of some others, I send you my servant, to beg the favour of you to come to Paris, if you can, and as soon as you can possibly, there being no time to be lost in the case. If I can see you here to-morrow morning, be pleased, Sir, to bring your son along with you, and to desire Sir Hector Maclean that I may have the favour of seeing him also. I would not give you this trouble if I were able myself to wait on you at St Germain's. I am, with great regard,

SIR,

Your very faithful, and

Saturday.

most obedient servant,

FRA. ROFFEN.

A

Sir

Sir HECTOR MACLEAN, LOCHIEL, and CLANRONALD,

The * * * * *

S I R,

Being informed by certain accounts from our friends at home, that our poor country has never been in more imminent danger of being utterly destroyed than it is at present, by the designs the government are forming against it, we thought that our duty, both to your M—— and to our country, did require of us to apply to you in this necessity, to know what your M—— thinks fit for us to do, in order to evite that ruin, which, unless some means be speedily fallen on to prevent, seems unavoidable. As the matter itself can bear no delay, we doubt not but that your M—— will honour us with your orders as soon as possible; and in case your M—— thinks fit that we should make an attempt for your M——'s service, and the relief of our poor country, whereby we may maintain ourselves in a capacity of being hereafter serviceable to your M——, which it is evident we never can be, if the designs the government have at present be carried into execution; we hope your M—— will be so good as to order us to be sufficiently furnished with such necessaries as are requisite for an undertaking of this sort, without which all endeavours will be vain and fruitless, and will appear equally rash and desperate. Your M—— shall ever find us, with the greatest zeal and duty,

S I R,

Your M——'s most faithful,

most humble, and most

obedient subjects and servants,

Paris, May 13. 1725.

J. CAMERON.
MACLEAN.
CLANRONALD.

ME-

MEMORIAL by the Marquis of SEAFORTH and
CLANRONALD, 26th May 1725.

MY Lord Marquis of Seaforth, and the Captain of Clanronald, being desired by my Lord Bishop of Rochester to confer together, that the K—— might be fully apprised of their sentiments on the present conjuncture of affairs, in relation to the highlands, they delivered their sentiments as follows.

That being long absent from their country, and having little correspondence with it, they could not pretend to form an opinion of what the highlanders may be willing or capable to do for his M——'s service, or their own deliverance: That they did not know how their countrymen were affected by the preparations of the present government to disarm them; and therefore could not judge whether they will tamely submit, or take the resolution to defend themselves.

As for what may be necessary for the encouragement of the highlanders on this important occasion, and to determine them to unite, and resist the government, they could not judge, for the reasons given; only they knew, nothing could be done without officers, arms, ammunition, money, and provisions.

That it would be unreasonable for them to pretend to advise his M—— in relation to the number and quantity of these things, because they supposed his M—— would either resolve to make as general an insurrection as possible at this juncture, against the present government, and summon all his faithful subjects to repair to his Royal standard; or he would only endeavour to give such supplies to the highlanders as should enable them to preserve themselves from ruin, by making such a resistance that might determine the government to let them live in peace, and leave them in a condition to serve his M—— and their country when a favourable occasion should offer.

On the first supposition, of a general insurrection, as his M—— would probably put himself at the head of his faithful subjects, so

in that case it was visible the greatest supplies that could be had would be wished and desired by all good men, both for the safety of his sacred person, and the happy success of the war.

On the second supposition, of supporting the highlanders, they would not presume to prescribe to his M——: It would be an effect of his goodness to support them; and therefore they thought it more respectful to him, to refer themselves to what he should think proper, than to make any demands. Besides, that being unacquainted, as is said before, with the present disposition and circumstances of the highlanders, they could not take it upon them to determine what might be requisite for them.

SEAFORTH.—M

CLANRONALD.

MEMORIAL given in to the BISHOP of ROCHESTER,
by Sir HECTOR MACLEAN and LOCHIEL. Dated
at Paris, 28th May 1725.

SIR Hector Maclean and Lochiel being asked by the Bishop of Rochester, What they thought might be of use to the K——'s better information in the present situation of the highlanders, whereby he may the more easily take measures how to prevent their ruin? they have given their thoughts as follows.

We beg leave to represent to the K——, that nothing less than the ruin of our country, and of his M——'s cause in Scotland, is intended at present by the government in England; and that both these considerations are so dear to us, that we cannot hesitate a moment to resolve to sacrifice our lives in order to prevent it. We doubt not but his M——, as soon as orders can arrive, will give us all the assistance he can, in point of arms, ammunition, officers, money, and dry provisions, such as biscuit, brandy, &c.

We

We humbly think this matter will appear to his M—— in two lights: *first*, As a necessary measure for the defence of the highlanders; and, in the *second* place, If a noble spirit should shew in the country, and a favourable event happen, it may, we presume, deserve his consideration, how far it may be improved for his M——'s service: In which case we beg leave humbly to represent to his M——, that it will be of the utmost consequence, when this matter is once in motion, to make a diversion in England: And we have too good an opinion of the K——'s friends in that country, to think, that after so many professions of loyalty, they should either want inclination or courage to act their part like men on this occasion.

We presume, for his M——'s information, to propose to him, whether he will not, on this occasion, write to ——— ——— ———, and we submit also to his M——, whether it might not be proper to write to ——— ———†. His M—— will also be best able to judge, whether good use might not be made of * * * *, who we understand has given late assurances of his loyalty to the K——. He is a great clan-man, and cannot naturally be pleased with the destruction of the highlands, and has lost his government of Inverness.

We are humbly of opinion it is happy that * * * * is in Scotland; for we believe him capable to act a considerable part in the K——'s service, and that of his country, on this occasion.

We humbly think, that a great deal will depend on the person whom his M—— will think fit to honour with the command. Such a one has noble examples to follow, even in late days, in the actions of the great Montrose, and of Lord Dundee; and if he treads in their footsteps, we cannot despair of every thing going well. It does not become us to propose any person to the K——

† Mention is made of several persons to whom letters ought to be addressed; but their names are omitted by the publisher. The writers of this memorial may have supposed that they had more friends in Scotland than they really had; it therefore seemed improper to publish a conjectural list of the partisans of the P——.

for this important trust: the merits and capacity of the K——'s principal subjects are known to him; and it is his right to chuse: but we hope he will permit us to represent how much the Marquis of Seaforth is beloved in his own country, and by his neighbours.

We have seen, and do concur with the informations given in by the Marquis of Seaforth and Clanronald to the Bishop of Rochester; but those other thoughts having occurred to us since that paper was wrote, we thought it our duty to represent them.

We have nothing else to lay before his M——, but that we shall long with the utmost impatience for his commands.

* * * * *

T O

The MARQUIS of SEAFORTH, Sir HECTOR MAC-
LEAN, CLANRONALD, and LOCHIEL.

Albano, June the 13th 1725.

BY the accounts I have received since I wrote to you on the 29th of May, I perceive the situation of my brave highlanders to be very different from what I then apprehended it, since it appears the design is not only to disarm them, but to extirpate the very race. This is what I am sure none of them will ever submit to without resistance, either those on the place; or you on this side of the sea; and I am myself resolved to do all that depends on me to support them, and enable them to defend themselves on this occasion. I remark with pleasure the Bishop of Rochester's forwardness to execute all my orders to this end with the utmost vigour; and as time doth not allow me to particularise them here, I shall refer you to him as to all particulars; not doubting of your exact compliance, and of your exerting on this occasion that ardent zeal for the good cause, and the welfare of your country, which you have already shewn in so loyal a manner.

I hope Providence will bless your and my endeavours on this occasion, and put me soon in a condition of making you a free and happy people, and of giving you, every one in particular, those marks of favour which you so justly deserve.

A N S W E R

to

B Y

Sir HECTOR MACLEAN and LOCHIEL.

Paris, July 2. 1725.

MY Lord Marquis of Seaforth having sent for us to come to him, on the 28th of last month, which we accordingly did, his Lordship opened your M——'s letter, directed to us all in general, which he had received from the Bishop of Rochester; and wherein we were mighty glad to find, that your M—— had generously offered us all the assistance we could reasonably have expected. But we were extremely mortified when, at the same time, my Lord Seaforth told us, that it was too late; for that he had received good intelligence from England, that the troops were so far advanced already, that they could not fail of being incamped; and possessed of the country, before we could be there; and consequently render all our endeavours to bring it relief fruitless; and that he had upon receipt of this intelligence, which he thought sure and sufficient grounds to go upon, sent orders to his men to deliver up their arms; thinking it the most safe and prudent way of acting as matters stood, and most conducive to your M——'s service, and the benefit of the country; and that he doubted not, but after serious reflection upon the matter, we would think that course the most advisable for us to follow likewise. Upon which, considering, on one hand, the person who got the intelligence to be of so known zeal and affection to your M——'s service, that we are persuaded he would do nothing he thought prejudicial to it; and, on the other hand, seeing his resolution and conduct upon receiving this intelligence; we thought

thought it our duty to let your M—— know, we are humbly of opinion, that our undertaking any thing at present could no wise advance your M——'s service, or the good of the country; at the same time assuring your M——, that if you think otherwise, we are ready to obey your M——'s orders with all chearfulness; as we shall ever be, upon all occasions, to make it appear to your M—— with how much zeal and duty we are,

S I R, &c.

Sir HECTOR MACLEAN

T O

LOCHIEL.

DEAR SIR,

THE following letters are exact copies; the first, of the K——'s letter, directed to you and me; the second, of the Bishop of Rochester's letter to me, wherein the K——'s was inclosed. The originals of both, which you have perused, are at present in my custody.

I am,

Dear SIR, yours, &c.

MACLEAN.

COPY of a LETTER from

T O

LOCHIEL and Sir HECTOR MACLEAN.

Rome, July 18. 1725.

I Have received yours, of the 2d July; and cannot but be sensibly concerned to find affairs in such a situation that my faithful highlanders could not be able to reap any advantage from the willingness

ness and readiness I was in to have assisted them on this occasion. I shall be, on all others, equally disposed to help them; and I heartily wish, that by a strict union and harmony, and a disinterested zeal for the good cause among all concerned in it, they may be yet able one day to make the most handsome appearance in its and their own defence. Your zealous and dutiful behaviour on this occasion is what I shall ever retain the most grateful memory of; and I hope the day will soon yet come, in which I may be able to distinguish those who have on all occasions so signalized themselves for my service. — R.

BISHOP of ROCHESTER

T O

Sir HECTOR MACLEAN.

S I R,

I Received the inclosed by the last Italian post, with directions to convey it to you; and, at the same time, "to say to you and "to Lochiel, in the K——'s name, all that is kind on your becoming behaviour on this occasion." These are the very words of the letter: I can add none that are more significant; and therefore take my leave, with assurances of my being,

S I R,

Saturday afternoon.

Your very faithful and

most obedient servant,

FRA. ROFFEN.

C

LORD

[to]

LORD INV—SS

TO

LOCHIEL.

SIR,

July 25. 1725.

I Can assure you, the Bishop of Rochester did justice to your zeal, in representing fully to his M—— the honourable part you, and your son, and Sir Hector Maclean, acted on this late occasion, when his M—— was hopeful that an opportunity might have offered, wherein he might have shewn how great a value he puts upon his faithful subjects in the highlands of Scotland. I need not repeat to you the concern their situation gives the K——; but I am hopeful it shall not go so ill with them as may be apprehended.

What your brother has undertaken is of a piece with the forwardness he always shewed, when any occasion presented of being useful.

Be so good as make my kind compliments to your son, and Sir Hector Maclean; and believe me, with truth,

SIR,

Your most obedient and
most humble servant,

INV—SS,



C A N O N S
O F T H E
CHURCH of SCOTLAND.

D R A W N U P

In the PROVINCIAL COUNCILS held,

At P E R T H,

A. D. 1242. and A. D. 1269.

EDINBURGH:

Printed by SANDS, MURRAY, and COCHRAN.

Sold by J. BALFOUR, and other Bookfellers.

MDCCLXIX.

C A N O N S

O F T H E

CHURCH of SCOTLAND

In the Provincial Councils held

At F. R. T. H.

A. D. 1560 and A. D. 1562



CANONS of the Church of SCOTLAND, in 1242 and 1269.

Concilium provinciale Scoticanum *.

Bulla Papæ Honorii III.

HONORIUS Episcopus, servus servorum Dei, venerabilibus fratribus universis Episcopis regni Scotiæ, salutem et apostolicam benedictionem. Quidam vestrum nuper auribus nostris intimaverunt, quod cum non haberetis archiepiscopum, cujus auctoritate possitis concilium provinciale celebrare, contigit in regno Scotiæ, quod est a sede apostolica tam remotum, statuta negligi concilii generalis, et enormia plurima committi, quæ remanent impunita. Cum autem provincialia concilia omitti non debeant, "in quibus de corrigendis excessibus "et moribus reformandis diligens est adhibendus cum Dei timore "tractatus †," ac canonicæ sunt relegendæ regulæ ac conservandæ, maxime quæ in eodem generali concilio sunt statutæ; per apostolica vobis scripta mandamus, quatenus cum metropolitanum noscimini non habere, auctoritate nostrâ provinciale concilium celebre-

* The learned and industrious Mr Thomas Ruddiman transcribed these canons from the chartulary of Aberdeen, and communicated them to Dr Wilkins. By him they were published in the first volume of *Concilia Magnæ Britannia*.

† These words are borrowed from 4. *Concil. Lateran. c. 6.*

tis. Dat. apud Tyberim xiv. calend. Junii, pontificatûs nostri anno 9. *.

Modus procedendi in concilio cleri Scotici.

PRimo induantur Episcopi albis et amictis cappis, solennibus mitris, chirothecis, habentes in manibus baculos pastores; Abbates in superpeliciis et cappis, mitrati cum mitris; Decani et Archidiaconi in superpeliciis et almuciis † et cappis. Alii vero clerici sint in honesto habitu et decenti. Deinde procedant duo ceroferarii, albis et amictis induti, cum cereis ardentibus, ante diaconum, qui legat evangelium, "Ego sum pastor," &c. quem comitetur subdiaconus, et petet diaconus benedictionem a conservatore, si præsens fuerit, vel ab antiquiore Episcopo, si sit absens. Perlecto evangelio, osculetur liber a conservatore, et singulis Episcopis. Deinde incipiat conservator hymnum "Veni Creator," et ad quemlibet versum incensetur altare ab Episcopis; quo facto, qui haberet dicere sermonem, acceptâ benedictione a conservatore, incipiat sermonem ad cornu altaris. Finito sermone, vocentur citati ad concilium, et absentes puniantur secundum statuta. Quibus statutis ibidem perlectis in publico, excommunicent Episcopi secundum statuta, habentes singuli in manibus candelas.

* This bull is preserved in *Chart. Morav. vol. 1, p. 11.* with some minute variations not worthy of being remarked.

† Amiculum seu amictus, quo canonici caput humerosque tegebant. *Du Cange Gloss. v. Almucium.*

Incipiunt

Incipiunt statuta generalia ecclesiæ Scoticanæ.

I. **C**Anones generalium conciliorum, ut Isidorus ait *, a tempore Constantini Imperatoris cœperunt, quibus sancta Romana ecclesia, fide Catholicâ succrescente, et sancti patres in concilio Niceno convenientes, secundum fidem evangelicam et apostolicam, certitudinem tradiderunt, inter cætera statuentes, sicut beatus Gregorius Papa scribit †, quod "sicut sancti evangelii libros quatuor, sic quatuor concilia suscipiens venerari me fateor; Nicenum scilicet, Constantinopolitanum, Ephesinum, et Cæleedonense," in quibus hæreticæ pravitates, et fidei Catholicæ impugnatores, confundebantur, et religio Christiana ad Dei laudem et omnium credentium salutem solidum recepit fundamentum: ex quo more per Catholicorum principum provincias et regna salubriter institutum est, ut singulis annis provincialia concilia ad decorem domûs Dei, et fidem Catholicam firmiter observandam, rite celebrentur. Cui mori, felicitis recordationis Honorius Papa in ecclesia Scoticana, consensum adhibuit specialem in hæc verba: "Honorius Episcopus, servus servorum Dei," &c. Auctoritate igitur Dei omnipotentis, et sacrorum canonum, ac sacrosanctæ Romanæ ecclesiæ, nos prælati ecclesiæ Scoticanæ concilium provinciale nostrorum prædecessorum more celebrantes, et laudabilem consuetudinem observantes, unanimi consensu statuimus et ordinamus, ut singulis annis singuli episcopi, et abbates, ac prioratum priores, in habitu solenni, ad concilium celebrandum, ad certum diem per conservatorem concilii sibi competenter præfigendum, devotè conveniant ‡, ut per triduum, si necesse fuerit, in eodem concilio

* *Etymol. l. 7. c. 16.* This is taken from *Decr. 1. dist. 15. c. 1.*

† *Decr. 1. dist. 15. c. 2.*

‡ The form of summoning is preserved in the chartulary of Moray, vol. 1. p. 94. It runs thus. "Litera conservatoris." "Reverendo in Christo Patri, &c. Domino, &c." "Talis"

concilio valeant, pro necessitatibus divinis et ecclesiasticis, commorari, et invocata Sancti Spiritus gratia, statum ecclesiasticum ibidem admodum debitum et placentem Deo reformare. Si quis vero eorum canonicam præpeditio fuerit impeditus, procuratorem vice suâ sufficientem substituat. Non autem veniens personaliter, cum venire possit et noluerit, auctoritate concilii et arbitrio puniatur.

Quomodo conservator debeat eligi.

II. **S**Tatuimus etiam imprimis, ut quolibet anno verbum prædicationis cuilibet Episcoporum uni post alterum injungatur in proximo concilio, per se vel per alium proponendum, incipiendo ab

“ Talis Episcopus Moravien. ac conservator concilii Scotici salutem. Tot onera per
 “ eos qui potestatem habere videntur, hodie imponuntur ecclesiis in partibus nostris,
 “ quod sacerdotes et possessiones eorum in luto et latere serviunt, et tot affliguntur
 “ angustiis, quod de amaritudinis calice omnes bibunt. Cupientes igitur ecclesiam ad
 “ solitam et pristinam libertatem reducere et reduci, provinciale concilium celebrandum
 “ apud Perth, in domo fratrum prædicatorum, die Mercurii proximè post festum Beati
 “ Lucæ evangelistæ, cum continuatione dierum, *auctoritate conservatoris*, præfigimus;
 “ eadem auctoritate vestram reverendam paternitatem requirentes, et in Domino at-
 “ tentius exhortantes, quatenus ibidem die dicto, cum continuatione dierum, cum pre-
 “ latis vestræ dioceseos, et capitulorum, collegiorum, et conventuum procuratoribus
 “ idoneis, in habitu decenti interfitis, ad tractandum super reformatione statûs ecclesiæ,
 “ et aliis quæ sunt contraria ecclesiasticæ libertati: nec dubitamus quin etiam modernis
 “ temporibus in ecclesia Scotica jam oppressa, pretiosas aliquas sibi Dominus confer-
 “ vaverit margaritas; quum diebus Helicæ septem millia hominum reservavit, qui ante
 “ Baal genua non curvarent.”

At what period this form was drawn up, is uncertain. I have sometimes thought that it was in 1390, after Alexander Stewart, Lord of Badyenoch, had burnt the cathedral church, and wasted the possessions of the see of Moray, with a barbarity shocking even to that rude age. But the expression “ *Talis Episcopus*,” may seem to import, that this was a set form, not adapted to particular circumstances; and if so, it must be admitted, that the Scottish clergy were possessed with the spirit of discontent: An evil spirit indeed, no less apt to murmur at imaginary than at real injuries!

Episcopo

Episcopo Sancti Andreae *, et quod unus Episcoporum conservator statutorum concilii ordinetur de concilio reliquorum, qui de concilio ad concilium suo fungatur officio, ac manifestos et notorios ejusdem concilii, seu alicujus statuti in eodem violatores puniat, et ad debitam satisfactionem per censuram ecclesiasticam secundum juris exigentiam efficaciter compellat †.

De fide catholica.

III. **S**Tatuimus sacri approbatione concilii, ut praelati majores et minores fidem catholicam et apostolicam indubitanter teneant, et subditos suos utriusque sexus in articulis fidei diligenter instruant, monentes et inducentes parochianos suos, quod ipsi suis liberis eandem fidem exponant, et eos doceant fidem Christianam observare.

Quod sacramenta ecclesiae diligenter ministrentur.

IV. **S**Tatuimus, quod sacramenta ecclesiastica cum devota reverentia in fide catholica celebrentur, sub certa forma a sanctis patribus et sacris scripturis tradita, [cum] sub certis verbis Catholice tradita, modis aliquibus immutare non liceat.

* The parity among the Scottish bishops was impaired when St Andrew's became an archiepiscopal see, during the incumbency of Patrick Graham, in the reign of James III. Whatever may have been the pretence, it is probable, that the ambition of Bishop Graham, and his intrigues at Rome, procured this pre-eminence, displeasing to the nation, envied by his brethren, and fatal to his own tranquillity.

† In this *second* canon, every one will perceive the office and duty of a Moderator of the General Assembly. Our forefathers, at the Reformation, were not disposed to condemn every salutary form approved by the experience of ages, merely because it happened to be *Papish*.

Quod ecclesiæ sufficienter ornentur.

V. **A**D hæc statuimus, quod ecclesiæ, ad modum facultatum ipsorum parochianorum, et per ipsos parochianos, et cancella * earum, per ipsos rectores, de lapidibus construantur, et postea consecrentur, et debitis ornamentis, libris et vasis, ornentur, et ad statum debitum reformentur.

De ecclesiis ædificandis.

VI. **I**tem statuimus, quod nulla ecclesia, vel oratorium, sine diocesani consensu, construat, vel in constructis, sine ejusdem consensu vel auctoritate, divina officia aliqua temeritate celebrentur, quin potius secundum canones sacros profanentur †.

De eodem.

VII. **E**T quia præsens statutum minus plenè multis locis invenimus observatum †, statuimus, ut quilibet nostrum in sua diocesi diligenter [inquirat], quo jure et qua auctoritate fuerint constructæ; quod si minus rationabiliter constructæ fuerint, vel etiam in posterum construantur, secundum instituta canonica sint

* The chancel was appropriated to the clergy. A poet of the lower age, quoted by Du Cange, gives a singular reason for this :

“ Infra cancellum laicos compelle morari,

“ Ne videant vinum cum sacro pane sacrari.”

† *Decr. 3. dist. 1. c. 18.*

† Hence arises one presumption, among others, that all these canons were not promulgated in the same council.

suspensæ :

suspensæ: proviso, quod cujuscunque auctoritate constructæ fuerint capellæ quæcunque, indemnitati in omnibus matricis ecclesiæ sic prospiciatur, ut nullum ei præjudicium generetur *, nec de oblationibus a privilegiatis alicubi aliquid recipiatur, nisi super hoc privilegium ordinario sufficiens exhibeatur: quod si aliqui contrarium fecerint, ipso jure sint suspensi.

Ne missæ celebrentur in privatis locis sine licentia Episcopi.

VIII. **I**tem nonnulli religiosi, et etiam alii, tam seculares quam ecclesiastici, in privatis et inhonestis locis sibi faciunt divina celebrari, immo potius in scandalum totius ecclesiæ profanari, ubi frequentius spurcitæ peccatorum committuntur, et animalia bruta commorantur †, nullâ petitiâ licentiâ vel obtentiâ a locorum ordinariis, aut aliquâ auctoritate exhibitâ; quapropter ne de cætero hujusmodi fiant, sub pœna suspensionis in personas, et interdicti in eadem loca, et etiam excommunicationis, si taliter delinquentes com-

* Concerning this subject, there is a curious writing in the chartulary of Dunfermline, vol. 2. p. 5. among the grants made to that abbacy by David I. "Recordati fuerunt barones Regis, et in hac recordatione omnes concordati sunt, quod eâ die qua Rex Alexander fecit capellam, [castelli de Strivelin], donavit et concessit eidem capellæ decimas dominiorum suorum in *soca* de Strivelin; — et præterea consideraverunt, quod ecclesia parochialis de Eccles habere debebat universas decimas quæ proveniunt de *burdmannis* et *bondis* et *greffmannis*, cum cæteris consuetudinibus quas debent ecclesiæ, et qui mortui fuerint, sive sint de mancipiis dominiorum, sive de parochia supra dicta, corpora eorum jaceant in cœmeterio parochiali præhominato, cum rebus quas debent habere mortui secum ad ecclesiam; nisi forte fuerit quod aliquis de burgensibus aliquo subito casu ibi moriatur."

† The celebrating divine service in a stable must have been owing to this, that on the same spot there had been anciently some place of worship, either Christian or Pagan. For a like reason, at Stanlake, in the county of Oxford, the minister of the parish, in his procession in Rogation-week, reads a gospel at a barrel's-head in the cellar of the *Chequer inn*. *Plot. Nat. hist. Oxf.-sh.* p. 203.

petenter moniti ab hujusmodi præsumptionibus non destiterint, firmiter inhibemus; volentes et statuentes, quod rectores ecclesiarum parochialium, et vicarii earundem, necnon etiam parochiales presbyteri, hujusmodi sententias auctoritate concilii valeant in suis parochiis executioni debitæ demandare.

De Honestate Clericorum.

IX. **S**Tatuimus etiam, quod quælibet ecclesia parochialis suum proprium habeat rectorem, aut vicarium, qui debitam curam animarum per se aut per alium idoneum ministrum de licentia diocesani valeat exercere; et quod iidem mundam et honestam ducant vitam, alioquin canonicæ subjaceant ultioni.

Quod Vicarii sufficientem habeant sustentationem.

X. **A**D hæc statuimus, ut vicarii ecclesiarum sufficientem et honestam habeant sustentationem de proventibus ecclesiarum, quum qui altaribus deserviunt, de ipsius et ecclesiæ proventibus vivere debent. Ita tamen, quod portio vicarii pura, libera, omnibus oneribus subductis, ad minus æstimationem decem marcarum attingat *, si ad hoc suppetant ecclesiæ facultates: proviso,

* This regulation appears to have been carried into execution. For, by chartulary of Dryburgh, p. 14. anno 1268, a pension of ten merks Sterling was provided to the vicar of Kilrethny, [Kilrenny in Fife]; and the same to the vicar of Salton, [East Lothian]; twelve merks to the vicar of Golyn, [Gulan, East Lothian]; ten pounds to the vicar of Childerkirk, [the church dedicated to the Innocents, now called *Ginglekirk*, in the Merse]; but this vicar was also to do duty at the chapel of Lauder in the neighbourhood.

It is remarkable, that the council of Oxford 1221. provides, c. 15. "Ut vicario perpetuo ad minus reditus *quinque mercarum* assignetur;—nisi forte in illis partibus Walliæ sit in quibus, propter tenuitatem ecclesiarum, minori stipendio vicarii sunt [sint] contenti." I believe it will be found upon inquiry, that the Scottish clergy have always had a more decent provision made for them than the English. This may appear a paradox to many of both nations.

quod in pinguioribus ecclesiis, secundum modum facultatum, et onera eisdem incumbencia, sufficientes portiones vicariis assignentur.

De Ornatu Clericorum.

XI. **A**D hæc statuimus, quod rectores et vicarii ecclesiarum, et etiam in dignitatibus constituti, ac sacerdotes, et clerici infra sacros ordines, tam in statumentis, quam in habitu corporis, decenter induantur: rubeis pannis, sive viridibus, seu virgatis *, non utantur, nec etiam pannis qui nimia brevitate notentur. Vicarii quoque et sacerdotes clausa desuper habeant indumenta, tonsuram deferant congruentem, "ne intuentium, quorum forma et exemplum esse debent, offendant aspectum †." Quod si ab ordinariis moniti emendare noluerint, ab officio suspendantur, et ecclesiasticis subiaceant disciplinis.

Quod nullus se intrudat in beneficio Ecclesiastico.

XII. **S**Tatuimus etiam, quod nullus rector, aut vicarius, sine conscientia diocesani, aut ejus officialis, super hoc potestatem habentis, in possessionem ecclesiasticam intrudatur, vel aliquam in eadem exerceat administrationem; et qui secus fecerit, secundum canonum sancita a jure, quod sibi competiit, cadere debet, et nihilominus arbitrio diocesani alias legitime puniatur.

* Striped cloaths, such as tartan. The phrase in the Canon law is *vestes virgate*. *Decr. p. 2. caus. 21. q. 4. c. 1.* There are innumerable prohibitions of the same nature in the different councils held over Europe in that age.

† These are the words of *Decr. p. 2. caus. 21. q. 4. c. 5.*

De Mansionibus Beneficiatorum.

XIII. **S**Tatuimus etiam, quod quælibet ecclesia mansionem aliquam prope ecclesiam habeat, in quam Episcopus, five Archidiaconus, honestè recipi valeant; quam decernimus infra annum debere fieri, tam expensis personarum quam vicariorum, pro rata sua portionum: sustentatio autem domorum spectat ad vicarium, cum habeat usum earum, et commodum, et ad hoc per sequestrationem fructuum ecclesiarum compellantur *.

Quod novi census non imponantur Ecclesiæ.

XIV. **S**Tatuimus etiam, quod novi census ecclesiis aut vicariis non imponantur, nec antiqui census augeantur; et si secus actum fuerit, secundum Lateranense concilium irritentur †, et delinquentes in talibus, prout justum fuerit, puniantur.

De Clericis Ordinandis.

XV. **A**D hæc statuimus, quod nullus Episcopus clericos de dioecesi alterius Episcopi ad ordines maximè sacros sine literis ordinarii sui vel ejus officialis admittat. Clerici autem transeuntes, vel ignoti, ad nullum officium ecclesiasticum sine literis commendatitiis certis admittantur ‡; et si sine admissione Episcopi, officialis, Archidiaconi,

* This shews by whom manses were built, and by whom supported, in the thirteenth century.

† 3. *Later. Concil.* c. 19. 4. *Later. Concil.* c. 46.

‡ *Constitutions of Sarum*, c. 47. Those constitutions were drawn up in the days of Richard Poore, bishop of that see. They were adopted in a synod at Durham; and from

Archidiaconi, in ecclesiis parochialibus seu capellis se divinis immiscuerint, ipso facto sint suspensi. Ad hæc statuimus, quod quilibet sacerdos seu clericus ad religionem transiens, habeat annuale suum*, sicut et alii, qui in Domino moriuntur.

De Confessoribus constituendis.

XVI. **Q**UOD in quodam concilio statutum est †, approbantes statuimus, ut per quoslibet decanatus prudentes viri et fideles constituantur per Episcopum confessores, quibus personæ, vicarii, et minores clerici, valeant confiteri, qui decanis forsitan erubescunt confiteri, et verentur. In ecclesiis vero cathedralibus confessores institui præcipimus generales.

De locato et conducto.

XVII. **C**UM laicis dari ecclesias ad firmam sit penitus inhonestum, et clericis quibuscunque, ad longum tempus propter continuationem temporis, quod consuevit asserre periculum ecclesiis, posset esse damnosum, utrumque districtius inhibentes, statuimus, ut nec laicis unquam, nec personis ecclesiasticis etiam, ultra quinquennium ad firmam non conferantur, nec, eo finito, renoventur eisdem, nisi prius ipsas alii habuerint mediatè ‡, salvis concessioni-
bus

from thence they probably travelled northward. If any one is inclined to suppose, that the English clergy copied from a model framed in Scotland, I shall not pretend to convince him of the contrary.

* The anniversary office on the day of the year when his death happened.

† This is copied from the *council of London* 1237, c. 5. held by Cardinal Otto; and it again, in all probability, from the *council of Oxford* 1222, c. 18. where almost the same words are to be found.

‡ The 17th canon is copied from the 8th chapter of the *council of London*. This regulation is well calculated to preserve the *actual* revenues of the church; but at the same

bus religiosorum super garbis eis in proprios usus concessis; et, ut omnia sint in tuto, præcipimus, ut præsentibus Episcopis vel Archidiaconis firmarum fiat conventio, ex qua plures literæ scribantur, quarum una maneat penes Episcopum, vel penes Archidiaconos.

De cohabitatione clericorum et mulierum *.

XVIII. **L**icet ad profugandum a laribus ecclesiæ putridum illud cupidinis libidinose contagium, quo decor ecclesiæ turpiter maculatur, studuerint semper ecclesiastici rectores, ipsum tamen improbitatis tantæ existit, ut semper se ingerat impudenter; nolentes ergo tantam ecclesiæ ignominiam conniventibus oculis præterire incorrectam, statuta Romanorum Pontificum, et maxime decretales Alexandri Papæ †, super hoc edita exequendo, statuimus, et statuendo præcipimus, ut clerici, et maximè in sacris ordinibus constituti, qui in suis domibus vel alienis detinent publicè concubinas, eas prorsus a se removeant infra mensem, alias de cætero nullatenus detenturi, alioquin ab officio et beneficio sint suspensi. Ita quod usquequo super hoc satisfecerint, de beneficiis ecclesiasticis se nullatenus intromittant; alioquin ipso jure ipsos eis decernimus esse privatos. Volumus quoque et destricte præcipimus, ut archidiaconi et decani ‡ super hoc diligentem fieri faciant per omnes decanatus inquisitionem, et quod statuimus, observari.

same time it must have prevented their increase. Even in our age, no tenant would bestow his money, or his industry, on a five-year's lease, without the possibility of a renewal. I much question whether this canon was ever strictly observed.

* Transcribed, with some alterations, from the council of London, c. 16.

† 3. *Later. Concil.* c. 11.

‡ The word *decani*, which so frequently occurs in our ecclesiastical history, imports *rural deans*. I mention this because some readers might be apt to render *decanus* by *dean*, to affix a modern idea to the word *dean*, and in conclusion make those passages unintelligible.

De rebus ecclesiæ non alienandis.

XIX. **S**Tatuimus etiam, quod ecclesiarum parochialium rectores seu vicarii easdem ecclesias sibi commissas nullatenus obligare valeant, nec fructus earum ad ulteriora tempora vendere, aut quibuscumque modis alienare, nisi quatenus ad eosdem rectores pro se viventibus, aut suo annuali, poterunt pertinere; ne per obligationes et alienationes hujusmodi ecclesiis ipsis, et earum patronis, aut earum rectorum successoribus, damnum aut injuria generetur.

Item de eodem.

XX. **S**Tatuimus etiam, quod nullus rector aut vicarius parochialis ecclesiæ decimas aliquas aut proventus alios ecclesiasticos personis conjunctis aut extraneis, præsertim laicis, etiam ad usum perpetuum, quoad concedentes aut recipientes vixerint, dare valeant, vel quomodolibet alienare. Et si quid contra præsumptum fuerit, irritum fit et inane; et quod sic alienatum fuerit, ad jus et proprietatem suæ ecclesiæ integraliter revertetur.

Item de eodem.

XXI. **A**Djicimus etiam, quod nullus rector aut vicarius decimarum seu aliorum proventuum ecclesiasticorum, per unius anni spatium antequam eadem decimæ seu proventus percipi debeant, venditionem, obligationem, seu aliam alienationem, anticipare præsumat. Et si secus præsumptum fuerit, iidem contractus omni careant firmitate; quum per contractus hujusmodi ecclesiæ læduntur, rectores et vicarii depauperantur, ementes etiam plerumque suis precii defraudantur, jura etiam ordinariorum quandoque deferantur, vel penitus enervantur.

Ne clerici vel monachi se negotiis immisceant.

XXII. **C**UM jure divino et humano caveatur, quod nemo militans Deo, implicet se negotiis secularibus; statuimus, quod nemo religiosus, aut sacerdotes vel clerici sanctis ecclesiis affecti, actores vel administratores secularium personarum in negotiis secularibus fiant, vel administrationes ab eis rerum seu negotiorum secularium suscipiant per quas ad ratiocinia teneantur *, ne et ipsi in scandalum ecclesie per secularem potentiam graviter opprimantur, et ecclesie sibi commissae ex hoc enormiter laedantur. Quod si aliqui adversus hoc in posterum venire praesumpserint, ab ecclesiastico ministerio fiant alieni, pro eo quod, clericali officio neglecto, fluctibus seculi vel potestatibus secularibus se † miscuerint.

De eodem.

XXIII. **I**tem salubri provisione decrevimus, ut clerici beneficiati de cætero domus aut possessiones laicas ad opus concubinarum et filiorum suorum emere non praesumant, nec etiam ad opus eorum domos construant in feodo laicali; sed nec etiam pecuniam ministrent ad hujusmodi emenda, ad opus illorum, ut sic eis subtrahatur occasio malignandi ‡. Si quis super hoc habeatur iusta ratione

* The same thing was provided by 3. *Later. Concil.* c. 12.; and by the council of Oxford, c. 7. ecclesiastics, by interfering in secular matters, subjected themselves to the cognisance of secular courts. For preventing this formidable evil, a canon was made, specious in theory, but impracticable in execution.

† In the MS. *junxerint* seems to be written. The sense is much the same either way.

‡ This canon is in part transcribed from the 37th ch. of the council of Oxford. The word *concubina* is not to be understood in the vulgar sense of the word. They who forbade

tione suspectus, nisi ad arbitrium superioris se purgaverit, ipsius arbitrio puniatur. Præterea, licet testamenta legitima clericorum beneficiatorum decedentium volumus observari, nolumus tamen quod concubinis aliquid in testamento suo relinquant. Quod si de cætero factum fuerit, totum illud in usum ecclesiæ quam rexit defunctus, Episcopi arbitrio convertatur.

De interdicto.

XXIV. Item statuimus, ut cum indultum sit hospitalariis, ac aliis religiosis quibusdam, ab apostolica sede, ut in ipsorum jocundo adventu * ad loca interdicta pro suis confratribus, eleemosynis colligendis, semel in anno loca ista debeant aperiri, quum ad divinarum celebrationem in locis hujusmodi nominatim excommunicati nullatenus admittantur, et ipsi præcipuè qui causam de testamentis dederunt interdicto. Prohibemus etiam, quod hujusmodi exempti funera nominatim excommunicatorum, aut publicorum peccatorum, et violatorum ecclesiarum, et aliorum quibus vivis non communicavit ecclesia, ecclesiasticæ sepulturæ tradere non præsumant; si vero in aliquo contra præmissa venire præsumpserint, privilegiorum hujusmodi ipsos fore decernimus abusores. Ipsos quo-

bade to marry, considered the wife of an ecclesiastic in the light of a bad woman. From this canon we may perceive how ill the doctrine of clerical celibacy was suited to northern constitutions. Enthusiasm may overcome nature, or imagine itself to have overcome nature; but the Scottish clergy were not enthusiasts.

* *Jocundus adventus* means inauguration; and hence, in a secondary sense, "tributum quod Domino exsolvitur cum primum ad aliquam dignitatem pervenit." *Du Cange*, Gloss. v. *Jocundus adventus*. The same author, v. *Confratria*, produces the following quotation. "Helias de Rosfiaco in abbatibus S. Martialis Lemovicens, "Exactionem quam Episcopi Lemovicenses, vel canonici, sub nomine CONFRATRIÆ, a populo violenter expetebant — irritam fecit." Both the words are well known at this day upon the continent, and especially in the Low Countries.

que ad ecclesias illas nullatenus admittendos, donec satisfactionem idoneam præstiterint de offensa; et quod a loco sacro extrahantur corpora sic sepulta.

De testamentis et ultimis voluntatibus.

XXV. **S**Tatuimus, ut cum de bonis in testamento alicujus cui-
cunque relictis ordinariis locorum certa fuerit ratio fa-
cienda, quia Cistercienses, ac alii exempti ad hujusmodi rationem
reddendam, nullatenus compelli possunt, ut dicunt, quod religiosi
hujusmodi executores nullo modo constituantur, nec in aliquo bona
defunctorum administrent. Quod si fuerint constituti, pro non con-
stitutis penitus habeantur.

De immunitate ecclesiarum.

XXVI. **S**Tatuimus, quod fugientes ad ecclesiam defendantur ab
eadem, nisi fuerint notorii depopulatores agrorum, aut
publici et notorii prædones viarum publicarum*, aut manifesti vio-
latores

* This is founded on a rescript of Pope Innocent III. to the King of Scotland, *De cr.*
Greg. 1. 3. tit. 49. c. 6. " Innocent. III. illustri Regi Scotiz, inter alia quæ nobis re-
" galis providentia suis literis intimavit, Quid de illis fieri debeat qui maleficia pertra-
" stantes confugiunt ad ecclesiam, ut pro reverentia sacri loci debitas penas valeant evi-
" tare, sollicitè requisivit. Nos igitur tuis quæstionibus respondentes, juxta sacrorum sta-
" tuta canonum, et traditiones legum civilium, ita diximus distinguendum, quod fu-
" giens ad ecclesiam aut liber aut servus existit. Si liber, quantumcunque gravia mal-
" ficia perpetraverit, non est violenter ab ecclesia extrahendus, nec inde damnari debet
" ad mortem, vel ad penam, sed rectores ecclesiarum sibi obtinere debent membra et
" vitam; super hoc tamen quod iniquè fecit, est alias legitime puniendus. Et hoc ve-
" rum est, nisi publicus latro fuerit, vel nocturnus depopulator agrorum; qui, dum iti-
" nera frequentat, vel publicas stratas obsidet, aggressionis insidijs, ab ecclesia extrahi
" potest, impunitate non præstita, secundum canonicas sanctiones. Si vero servus fue-
" rit qui confugerit ad ecclesiam, postquam de impunitate sua dominus ejus clericis ju-
" ramentum

latores aut effractores ecclesiarum, seu a canone vel ab homine excommunicati, quibus casibus adhuc sunt tuendi, donec dioecesanus vel ejus officialis pronuntiaverit sententialiter eos ab ecclesia non esse defendendos.

Item de eodem.

XXVII. **A** Djicientes, quod nullus vicarius, seu presbyter, seu clericus alius, aliquem cruce signatum *, seu clericum captum pro homicidio, præda, latrocinio, maximè si super his maleficiis fuerint defamati, de manibus balivorum laicorum requirat sine jussu et conscientia Episcopi, Archidiaconi, vel Decani, loci illius ubi fuerit requirendus. Prohibemus etiam, ne laicus fidejussor inveniatur apud balivum laicum pro talium captorum liberatione; statuentes, quod detentores talium privilegiorum, postquam canonicè moniti fuerint et requisiti, ad liberationem eorundem per censuram ecclesiasticam compellantur.

" ramentum præstitit, ad servitium domini sui redire compellitur, etiam invitus; alioquin a domino poterit occupari."

I am persuaded that this rescript was issued by Innocent III. to William the Lion: 1st, Because they were cotemporaries from 1198 to 1214; 2^{dly}, Because, between the death of William the Lion in 1214, and the death of Innocent III. in 1216, the Pope had little leisure for answering rescripts from Scotland; 3^{dly}, Because the question put to the Pope for his determination better suited a sovereign long versed in the arts of reigning, than the tutors of Alexander II. a minor.

From this text of the Canon law we learn, that there were robbers in Scotland, who followed their occupation throughout the day, and retired to a sanctuary in the evening.

* On those who took upon themselves the cross, or engaged in an expedition to the Holy Land, politic popes and zealous princes bestowed most extravagant privileges. Even the virtuous St Lewis granted them a *superfedere* during the expedition, or for a term of years [1245]. In other words, for a term of years he dissolved society, and made the obligations between man and man elusory.

De eodem.

XXVIII. **S**Tatuimus etiam, clericos in quolibet ordine ab ecclesia esse defendendos, donec, exigente justitiâ, propter immanitatem criminum a susceptis ordinibus degradentur; et ne maleficia transeant impunita, in maleficiis deprehenfi aut manifesti convicti, arctæ custodiæ carceris diœcesani, quem quilibet Episcopus habere tenetur, tales clerici commendentur, ac pane doloris et aquâ tribulationis ibidem sustententur, ne fame vel siti in carcere suffocentur.

De feriis.

XXIX. **S**Tatuimus etiam, quod de cætero placita secularia in diebus dominicis ac in aliis festivitibus solennibus minime teneantur; neque in ecclesiis, cœmeteriis, aut aliis locis Deo dedicatis, talia placita, et maxime causæ sanguinum, aut criminales, per quoscunque iudices seculares locis aut temporibus prædictis agitentur.

Ut libertates ecclesiæ sine diminutione conserventur.

XXX. **S**Tatuimus etiam, quod nulli permittatur violare aut diminueri libertates seu immunitates aut consuetudines rationabiles rerum aut personarum ecclesiasticarum hactenus observatas, ac divino jure vel humano salubriter et rationabiliter introductas.

De crucefignatis ab ecclesia defendendis.

XXXI. **S**Tatuimus autem auctoritate concilii Lateranensis, quod crucefignati ritè ab ecclesia tuendi sunt; nisi, propter suorum scelerum immanitatem, ab ecclesiastica defensione fuerint sequestrandi; super hoc justum iudicium dioecessani modis omnibus expectetur.*

Quod nam non capiantur per laicos in terris ecclesiasticis.

XXXII. **S**Tatuimus, quod nullus vicecomes, balivus, vel quicunque laicus, namum capiat, vel capi faciat, in foro aliquo, vel extra forum, de rebus clerici, vel etiam laici, manentis in terris ecclesiarum, vel etiam ad vendendum compellant, sub æstimatione, quæ "For le Roy" vulgariter dicitur. Quod si secus actum fuerit, si capiens vel capi faciens admonitus res taliter captas, aut venditas, infra terminum sibi statutum non restituerit, et etiam de injuria satisfacere contempserit, per excommunicationis sive interdicti sententiam, secundum quod videbitur expedire, sine moræ dispendio coërceatur.

Quod clericus non trahatur ad forum seculare.

XXXIII. **S**Tatuimus etiam, quod si ecclesiastica persona contra aliam personam ecclesiasticam moveat quæstionem personalem, vel etiam realem, super rebus aut aliquibus bonis ecclesi-

* The *Crucesignati* had so many, and such extensive privileges, that on occasion of mutual contracts there arose a necessity of renouncing them. Hence the phrase, "Renunciantes omni privilegio, maximè *crucesignatorum et crucefignandorum*;" *Chart. Morav.* vol. 1. p. 102. Du Cange mentions the same thing to have happened on the continent; *Gloss. v. Crucesignati*. Privileges granted for eluding the common laws of society must themselves prove elusory.

afficiis, eam coram iudice ecclesiastico prosequatur super his, adversarium suum nullatenus ad forum vetitum pertrahendo. Quod si aliter ab aliquo præsumptum fuerit, si canonicè monitus non destiterit, actor a jure, quod sibi competit, cadat, reus, si consentiat, pro convicto habeatur; nihilominus, si ulterius perseverent, et pœnas prædictas contemnant, secundum sacros canones, et auctoritate concilii, excommunicati publicè denuncientur. Adhæc, cum invasores ac perturbatores immunitatum, libertatum, possessionum ecclesiasticarum, necnon perturbantes pacem per aliquas fraudes, odia, vel machinationes, per sententiam latam a canone ipso facto sint excommunicati, auctoritate eorundem canonum et concilii decrevimus eos debere excommunicatos publicè denunciari.

De decimis et primitiis.

XXXIV. **S**Tatuimus, secundum divinæ legis et humanæ præcepta, quod decimæ de omnibus quæ innovantur, de quibus decimæ præstari debent, ut de blado, fœno, lino, de hortis, de molendinis, de piscariis *, de fœtibus animalium, lana, lacte, caseis, quocunque tempore fiant, pullis, ovis, negotiatione, venatione, silva cædua, de fructibus arborum, et aliis hujusmodi, integrè persolvantur his ad quos pertinere noscuntur.

De decimis hortorum.

XXXV. **A**D hæc decrevimus, quod decimæ hortorum in civitatibus et burgis, ad quamcunque culturam redigantur, ad vicarium pertineant. Decimæ vero hortorum in villis, pro qua

* The exaction of the tithe of *sea-fish* appears to have been fully established so early as 1222; *Ch. Dryburgh*, p. 31. Even a charter by William the Lion, still earlier, mentions "decimas de blado, lana et lino, de pullis et vitulis, de purcellis et agnis, de bu-tiro et caseo, de piscariis," &c. *Chart. Morav.*, vol. 1, p. 36.

parte fuerint ad culturam segetis redacti, ad personam pertineant, et pro alia parte ad vicarium. Linum vero, ubicunque seminatur, ad vicarium pertineat *.

De decimis vaccarum.

XXXVI. **I**tem de vaccis foetis statuimus, ut si de earum lacte non fiat caseus, vel butirum, pro vacca tres denarii per annum, et pro ejus vitulo unus denarius eodem anno, pro decima exigatur.

De decimis ovium.

XXXVII. **I**tem statuimus de ovibus, quod si oves, vel cætera animalia, in diversis parochiis extiterint per diversa tempora, quælibet ecclesia pro rata temporis decimam percipiat, dum tamen per mensem integrum ad minus in alicujus parochia steterint; mi-

* In consequence, as it would seem, of this canon, the chapter of Moray pronounced a decree 1369: "Quod ducentes *meremia* de nemore cum bobus et plaustris solvant curato suo decimum pro decima tempore æstivali; — in hyeme tricesimum denarium; — et ad carientes petas, vel consimilia, idem diffiniebatur extendendum; — molendinarii solvant decimam de molendino, et de terra molendini facta assedari cum molendino, et curatus allocabit, et subducet unum denarium, et unum obolum de qualibet acra terræ ordeaceæ, et unum denarium de qualibet acra terræ avenaticæ;" *Chart. Morav.* vol. 1. p. 81. The learned reader needs not be informed, that *meremium*, corrupted from *materiamen*, means any wood fit for the uses of building. Thus in the chartulary of Aberbrothock, vol. 1. p. 118. a grant occurs with this title: "De licentia *meremii* in forestis Regis;" bearing a liberty, "capere in forestis quæcunque eis necessaria fuerint, ad ædificia sua, et ad usus eorum proprios."

The humanity of the *modus* established by the chapter of Moray is remarkable. From the tithe of wood brought from the forest in winter, two thirds were deducted. It is strange that something of the same kind was not introduced with respect to the tithe of sea-fish, where the expence, and the actual risk of the fishers, were so evident.

noris autem temporis nulla ratio habeatur: fructus autem toto tempore, quo curantur, non quo percipiuntur, accipere debemus, et hoc ipsum inter Episcopatus observetur.

De eodem.

XXXVIII. **I**tem statuimus, si parochianus alicujus ecclesiæ per mensem, vel ultra, propter herbam cum suis averiis in alia parochia commoretur, id, quod supradictum est de ovibus, observetur.

De eodem.

XXXIX. **I**tem statuimus, quod animalium quæ cubant in una parochia, et pascuntur in alia, per totum annum, decimæ dividantur æqualiter: si autem communiter pascantur in utraque parochia, et cubant tantum in una; illa, in qua cubant, tres partes recipiat, et quarta pars remaneat ecclesiæ in cujus parochia pascuntur.

De decima fœni et molendinorum.

XL. **I**tem statuimus de decimis fœni, et molendinorum, quod integrè persolvantur; quas si aliquis solvere noluerit, post triam admonitionem excommunicetur.

De mercenariis.

XLI. **I**tem statuimus, quod sufficiat a mercenariis, qui opera sua locant pro dimidia marca, vel infra, exigere tres oblationes per annum pro decima mercedis, quam recipiunt.

De

De decima piscationum.

XLII. **I**tem statuimus de decimis piscatorum, quod nulla persona vel vicarius ab alienis parochianis decimas piscationum exigere præsumat, nisi quamdiu in sua parochia domus conduxerint, vel mansiunculas * ad inhabitandum fecerint, vel ex mutuo seu commodato habuerint; nisi secus ecclesiarum aliquâ legitimâ præscriptione fuerit munita.

Casus in quibus excommunicantur, qui perturbant viros ecclesiasticos, seu eorum procuratores, ne faciant commodum suum de decimis suis.

XLIII. **I**tem statuimus, ne advocati ecclesiarum, seu quilibet laici, impediant vel prohibeant, aut aliquo modo compellant, personas, vel vicarios, seu procuratores eorum, quo minus de decimis suis, seu dominorum suorum, liberè valeant disponere, vendere, vel alienare, quocunque modo voluerint, nec etiam suis, vel alienis hominibus prohibeant, ne decimam emant, seu etiam alias obventiones; nec etiam clericis aliquod impedimentum præstent, quo minus ad opus proprium eas colligant, et pro arbitrio suo de eis disponant. Quod si quis contra facere præsumpserit, vel quoquomodo infraudem ecclesiasticæ libertatis, et sacrorum canonum, machinatus fuerit, auctoritate concilii generalis excommunicetur.

* Called *Boya* in *Chart. Balmerinoch*, p. 16.; the same with *Botha*. Hence *Booth* in England, and *Bothie* in Scotland, at this day.

De furantibus decimas.

XLIV. **I**tem statuimus, quod quicumque filii perditionis decimas furtivè subripuerint, aut vi aut clam occupaverint, aut decimas segetum sectas in agris reliquerint, aut per agros projecerint, et ad horrea, secundum rationabiles et antiquas consuetudines, deferre contempserint *, ecclesiasticâ censurâ ad satisfaciendum Deo et ecclesiæ, ac clericis læsis et damnificatis, legitimè compellantur.

De eodem.

XLV. **A**D hæc statuimus, quod istæ sententiæ in singulis ecclesiis singularum diocesum ad nos spectantium per tres dies solennes singulis annis publicentur.

De conspiratoribus.

XLVI. **E**xcommunicamus etiam omnes conspiratores contra proprios Episcopos, vel alienos regni, et omnes conspiratoribus consentientes, eo quo tales scismatici sunt, et infames.

De obedientia Clericorum.

XLVII. **Q**uoniam “melior est obedientia quam victima,” et contumacia seu inobedientia peccato ariolandi et idola-

* This shews, that the laity were wont to transport the great tithes to the ecclesiastical granaries; but that there was no law obliging them to perform that service. The church supplied the defect, by terming them *the sons of perdition* who refused to perform that service, and by treating them accordingly.

triæ comparatur *; statuimus, quod omnes ecclesiastici viri, suis Diœcesanis, Archidiaconis, Decanis, in mandatis licitis et canonicis, contumaciter, et sine manifesta causa rationabili, resistentes, ab officio suspendantur, et, crescente contumaciâ, poenæ majori subdantur.

De quæstionariis, qui non nisi semel in anno admittantur.

XLVIII. **Q**Uoniam quidam quæstionarii † variis illusionibus animas simplicis populi seducunt, statuimus, quod cum aliquis quæstionarius ad aliquam ecclesiam accesserit, ministrans in eadem ecclesia, eodem die negotium dicti quæstionarii parochianis suis reverenter exponat, secundum quod in literis Domini Papæ ‡ et diœcesani continetur: ita quod dictarum literarum tenorem nullatenus excedat. Ad alium diem autem infra annum illum eundem quæstionarium, in eadem ecclesia, pro eodem negotio, nullo modo admittat. Ad hæc statuimus firmiter observandum, quod a principio Quadragesimæ usque ad octavas Paschæ negotium fabricæ ecclesiæ Glasguensis ||, omnibus diebus dominicis, et festivis, fideliter,

* That "rebellion is as the sin of witchcraft," is a text which, on different occasions, has been differently applied. At one time it has been used to enforce *clerical obedience*; at another, *passive obedience* of subjects towards their civil rulers. Such glosses will always be found where politicians interpret scripture.

† More properly called *Eleemosynarum quæstiones*. They are sometimes called *Prædicatores*, as in 4. *Later. Concil.* c. 62. from whence this canon is derived. In the same place the form of the brief is to be found. How scanty and inanimate the sermons of that age must have been, may be gathered from this circumstance, that *they* were, by excellence, termed *preachers*, who literally *preached themselves*.

‡ See *Decr. Greg.* l. 5. tit. 38. c. 14. taken from the second Lateran council.

|| John Bishop of Glasgow is said to have rebuilt the cathedral church 1136. *Chr. Melros.* Joceline Bishop of Glasgow is said to have rebuilt it 1197. *Ibid.* We see, how-

fideliter, et diligenter, in singulis ecclesiis post evangelium missæ, parochianis exponatur, et indulgentia eidem fabricæ subvenientibus concessa, quam in qualibet ecclesia scriptam esse præcipimus, apertè et distinctè eisdem parochianis vulgariter dicatur, et elemosynæ eorundem, ac bona decedentium ab intestato, ac etiam piè legata, secundum consuetudinem hætenus approbatam, fideliter colligantur, et decanis locorum in proximis capitulis, sine diminutione, assignentur, et infra dictum terminum nullus quæstionem pro negotiis aliis in ecclesiis parochialibus admittat.

Quod excommunicati sint subvertentes libertatem ecclesiæ.

XLIX. **D**E prælatis et clericis stipendiis ecclesiæ militantibus, qui, contra canonicas sanctiones, et libertates ecclesiasticas et consuetudines ecclesiæ Scoticanæ hætenus obtentas, consilium et auxilium laicis impendunt, et maximè de his qui literas dictant, scribunt, et consignant, seu statuta condant, per quæ jura, seu statuta, libertates ecclesiæ, et consuetudines hujusmodi, possunt subverti, et de aliis, scilicet statutariis *, consiliariis, et eorum fautoribus, statuendo decrevimus, quod quoniam omnes tales in canone latæ sententiæ incidunt, pro excommunicatis publicè denuncientur. Si quis vero beneficiatus in posterum super aliquo præmissorum fuerit convictus, auctoritate istius statuti noverit se beneficio suo fore privatum; si præditus dignitate vel prælaturâ aliquâ, hujusmodi attentare præsumpserit, omni dignitate careat et honore; si laicus et ab ecclesia infeodatus, feodo suo privetur. Si clericus hujusmodi facere præsumat, et postea ad ecclesiasticum beneficium fuerit præsentatus, nullatenus admittatur, nisi coram Diœcesano suo super hoc purgaverit innocentiam.

ever, from this 48 canon, that fifty years after the days of Bishop Joceline, the building was not completed.

* In M. S. Statuariis.

Infraſcripti excommunicandi ſunt quater in anno.

L. Tem ſtatuiſmus, quod in ſingulis eccleſiis, tam militum quam aliorum, quater in anno in proximis dominicis poſt obſervationem quatuor temporum excommunicentur in genere ſortilegi, venefici, incendiarii, eccleſiarum fractores, falſarii, uſurarii manifeſti, et ſcienſter impediētes teſtamenta legitimè facta *, et etiam impediētes ordinarios quominus de bonis ipſorum decedentium ab inſteſtato, ſecundum conſuetudinem eccleſiæ Scoticanæ, ritè valeant ordinare, laici detinētes, invadētes, fraudantes, et auferētes poſſeſſiones, aut alia quæcunque jura eccleſiaſtica aut libertates; et omnes illi qui ſe in beneficio eccleſiaſtico intrudunt; et teſtes ſcienſter perjuri, per quos aliquis amittit hæreditatem, aut beneficium eccleſiaſticum, ſeu terrenum; raptōres etiam publici et notorii; et omnes ſcienſter receptantes fures, vel raptōres, ut furentur, vel rapiant, vel eos manutēnent, vel pro eis fidejudent, cum ex dicta cauſa querelantur. Contra latrōnum et prædonum flagitia, quibus nimis abundat regio Scotanica, quod nequaquam eſſet, ut accepimus, niſi majores eos defenderent, et manutēnerent, aut pro eiſdem ſcienſter et prudenter fidejuberent, ſic duximus ſtatueudum, ut nemo eos protegat, manutēneat, ſeu defendat, vel in domibus teneat, vel ullos quos ſciverint, vel manifeſtum fuerit, latrocinium aut prædam exercere: eos autem qui contrafecerunt, ſi tertio commoniti per eccleſiaſticum judicem, ipſos a ſe non abjecerint, eccleſiaſtica excommunicationi ſubjugamus. Monitionem autem volumus et ſtatuiſmus ſufficere generalem; etſi fiat alicujus nomine non expreſſo, dum ita publicè ac ſolenniter fiat, quod ad eorum notitiam valeat

* This part of the canon is taken from *the Conſtitutions of Sarum*, c. 33. It is remarkable, that thoſe conſtitutions mention, "auxilium demonum quocunque modo invocantes," which is omitted in the Scottiſh canon.

pervenire *. Item omnes qui in causa matrimoniali falsas exceptiones malitiosè opponunt, vel opponi procurant, vel qui in causa matrimoniali falsum perhibent testimonium scienter, vel id fieri procurant, vel testes subornant, excommunicationis sententiæ se noverrint subiacere.

De eodem.

LI. **I**tem excommunicamus illos qui pacem regis aut regni perturbant; et omnes illos qui, odio vel lucri causa, aliis crimina falsò imponunt, pro quibus mors, vel exilium, vel membrorum mutilatio, vel exhæredatio, seu bonorum spoliatio, sequi debeat, si judicialiter convincantur.

De excommunicato per unum Episcopum denunciando per alios, et de interdicto promulgando in terris excommunicati, si per quadraginta dies in pertinacia perseveravit, et de poena prælatorum ista non observantium.

LII. **S**tatuimus etiam, ut quoties aliquis ex nobis Episcopis, in aliquem nobis jure dioces. subditum, sententiam excommunicationis ob aliquam causam rationabilem et legitimam promulgaverit, et eandem alicui nostrum demandaverit publicandam et demandandam, quibus nostrum eam per suam diocesim faciat publicari, et ipsum delinquentem denunciaret excommunicatum, et eundem per se ipsum tanquam excommunicatum evitet; et quatenus in eo est, ab aliis faciat evitari. Et si talis excommunicatus in sua pertinacia per quadraginta dies claves ecclesiæ contemnendo, animo perseveraverit indurato, et idem excommunicator extunc terras ipsius excommuni-

* What concerns *latrones* is taken from the council of London, c. 18. The Scottish canon has added *pradones*, in allusion to the practice of robbing in gangs.

cati, in dioecesi sua fitas, et loca per quæ tranſierit, et per triduum et amplius in eiſdem fecerit moram, eccleſiaſtico ſuppoſuerit interdicto, et idem interdictum alicui noſtrum demandaverit publicandum; quilibet noſtrum terras ejuſdem excommunicati, in dioecesi ſua fitas, ſupponat interdicto, quouſque per eundem excommunicatorem dictæ ſententiæ fuerint relaxatæ. Loca vero per quæ tranſierit, et quamdiu ibi moram fecerit, ſimiliter eccleſiaſtico ſupponat interdicto. Ut tamen regiæ maiestati debitus honor deferatur, ſi idem excommunicatus in comitatu domini regis, vel reginæ conſortis ſuæ, communis congregationis ipſius regni magnatum extiterit; tunc dioceſanus loci ejus per ſe, vel per alium, talem eſſe excommunicatum denunciât, eoſdem canonicè inducendo, ut ipſum excommunicatum a ſua communione repellant, et evitent, et a ſuis faciant evitari. Alioquin cum ſibi videantur favere, qui manifeſto facinori negligunt obviare, idem locus per dioceſanum eccleſiaſtico ſupponatur interdicto, tamen regis et reginæ liberorumque ſuorum capellis in ſua dignitate feliciter duraturis. Et ut divinus timor incutiat fortius obſtinatis, ad excommunicatorum inſolentiam reprimendum ſi neceſſe fuerit, brachii ſecularis auxilium, prout catholicorum regum temporibus fieri conſuevit, et de jure debuit, invocetur. Et ſi aliquis noſtrum aliquâ levitate ab eccleſiaſtica et divina obſervatione receſſerit, vel in aliquo eam impedierit, per ſacri concilii deliberationem fratrum ſuorum atque prælatorum conciliis careat aliorum.

De pœna inceſtus clericorum.

LIII. **S**I quis ſacerdos cum filia ſua ſpirituali fornicatus fuerit, ſciat ſe grave adulterium commiſſiſſe; idcirco ſi ſcœmina laica ſit, omnia derelinquat, et res ſuas pauperibus tribuat, et converſa in monaſterio Deo uſque ad mortem ſerviat. Non debet epiſcopus vel præbyter commiſceri cum mulieribus, quæ eis confeſſæ ſunt peccata; ſi fortè, quod abſit, ſic contigerit, ſic pœniteat quomodo et de filia

H

ſpirituali

spirituali *. Episcopus annis quindecim, presbyter annis duodecim, poeniteat, et deponatur tamen, si in conscientiam populi venerit.

Quod absolutio excommunicationis non sit extorquenda per laicos.

LIV. **C**UM laicis de rebus seu personis ecclesiasticis nulla sit attributa potestas disponendi, quibus obsequendi manet necessitas, non auctoritas imperandi, ad extirpandum constitutionis vitium quod nuper inolevit, in subversionem ecclesiasticæ libertatis gladio materiali subjiciantur; duximus statuendum quod nullus, qui jurisdictioni præest, sententiam excommunicationis, interdicti seu suspensionis, in subditos suos ex quacunque causa latam, ad mandatum alicujus secularis potestatis, de cætero præsumat relaxare. Si vero secularis potestas in pertinacia sua perseverans, ad relaxandum sententias per res ecclesiæ mobiles sive immobiles, seu quovis alio modo compellat, loci diocesanus auctoritate concilii et canonis puniat hujusmodi delinquentem.

De Baptismo.

LV. **Q**Uoniam baptisma prima tabula est post naufragium, et magna est virtus et efficacia hujus sacramenti, cum ab ipso Deo institutum sit, et ejus sanguine rubricatum; præcipimus, ut hoc sacramentum celebretur cum honore, et reverentia, et magna cautela, maxime in distinctione verborum, in quibus tota vis hujus sacramenti consistit, et salus puerorum. Forma autem baptizandi hæc est, "Ego baptizo te in nomine Patris, et Filii, et Spiritus Sancti. Amen." In Romano vero et etiam Anglico idiomate sub eadem forma doceant sacerdotes frequenter, et posse, et debere se baptizare pueros in necessitate. Et pater et mater baptizent filium suum

* The word *carnali* is placed above *spirituali*, in another hand.

in necessitate, cum aliæ defint personæ *, et sine præjudicio matrimonii †. Fontes sub sera clausa custodiantur. Chrisma similiter, et sacrum oleum, et eucharistia, sub clave custodiantur. Si vero hi, ad quos spectat custodia, ea incautè reliquerint, tribus mensibus ab officio suspendantur. Et si per eorum incuriam aliquid nefarium inde contigerit, graviori subjaceant ultioni. Baptisterium habeatur in qualibet ecclesia, baptismati, lapideum vel ligneum, competens, quod decenter cooperiatur, et reverenter conservetur, et in alios usus non convertatur. Aqua, in qua baptizatus fuerit puer, ultra septem dies in baptisterio non fervetur. Si vero puer a laico domi baptizatus fuerit, aqua, propter reverentiam baptismi, vel in ignem fundatur, vel ad ecclesiam deferatur in baptisterium fundenda. Item vas illud, in quo baptizatus fuerit, vel in igne comburatur, vel ad usus ecclesiæ deputetur. Cum autem laicus in necessitate baptizaverit puerum, sacerdos postea diligenter inquirat ab eo, quid dixerit, aut quid fecerit; et si inveniatur laicum discretè etiam in forma ecclesiæ baptizasse, in quocunque idiomate, approbet factum ‡; sin autem, ipse sacerdos baptizet puerum, sic dicendo: "Non te baptizo, si baptizatus es; sed si non es baptizatus, baptizo te in nomine Patris, et Filii, et Spiritûs Sancti. Amen ||." Sub ista forma pueri, de quibus dubium est an sint baptizati, baptizentur. Cum vero a laico baptizatus fuerit infans, postmodum allato puero ad fores ecclesiæ, suppleatur a sacerdote quod deest; scilicet paululum salis, et aurium et narium linities cum saliva **. Exorcismi etiam dicantur, et ad fontes omnia fient.

* This is transcribed from the *Constitutions of Sarum*, c. 16.

† This is an adjudged case, *Decr. p. 2. caus. 29. c. 7.* Pope John VIII. determined it upon this principle, "Whom God hath joined, let no man put asunder." In the canon law, the application of texts of scripture is not always so unexceptionable.

‡ *Constitutions of Sarum*, c. 19.

|| I have supplied a defect in this passage from *Decr. Greg. l. 3. tit. 42. c. 2.*

** *Paululum salis.* The reason why salt is necessary in the composition of holy water, may be found in *Decr. part 3. dist. 3. c. 20.* "Si sale asperso per Helisæum prophetam
"sterilitas

fient puero, quæ fieri solent, sine immersione et aquæ benedictione. Quando autem baptizatus fuerit puer, de quo dubium est an baptizatus fuerit, omnia fiant a sacerdote, dum tamen ante immersionem dicantur verba supradicta: "Non te baptizo," &c. Ad levandum vero puerum de fonte, tres ad plus admittantur personæ in baptismo. Marem duo mares et una fœmina suscipiant; fœmina vero duabus fœminis, et uno mari suscipiatur. Plures tanquam testes, non tanquam patrini, si haberi potuerint, habeantur, propter varias causas. Panni autem chrismales non nisi in usus ornamentorum ecclesiæ convertantur, nec semel ad ecclesiam cum pueris delati, aliis ad baptizandum prece vel pretio non tradantur. Similiter alia ornamenta ecclesiæ, quæ pontificalem acceperunt benedictionem, nullo modo in profanos usus convertantur *. Fœminæ moneantur, ut pueros suos cautè alant, et juxta se de nocte non collocent [teneros], ne opprimantur; solos in domibus, ubi ignis fuerit, vel solos juxta aquam, non relinquant. Et hoc omnibus diebus dominicis dicatur †.

"sterilitas aquæ sanata est, quanto magis divinis precibus sacramentum sal sterilitatem rerum aufert humanarum, et coinquinatos sanctificat!" &c. And again, *Dec. Part 3. dist. 4. c. 64.* Datur baptizando sal benedictum in os, ut per sal typicum, sapientiæ sale conditus, fœtore careat, nec a vermibus peccatorum ultra putrefiat."

Aurium et narium linitio cum saliva. Concerning this, see *Decr. part 3. dist. 4. c. 68.* "Hoc enim sacramentum hic agitur, ut per salivam typicam sacerdotis et tactum, sapientia et virtus divina salutem ejusdem catechumeni operetur: ut aperiantur ei nares ad accipiendum odorem notitiæ Dei; ut aperiantur illi [ei] aures ad audiendum mandata Dei; ut aperiantur ei sensus ad audiendum mandata Dei, sensumque intimi cordis respondendum."

Exorcismi etiam dicantur. For this also the canon law assigns a reason, *Decr. part 3. dist. 4. c. 53.* "Non prius fontem vitæ adeant, quam exorcismis et exufflationibus clericorum, spiritus ab eis immundus abjiciatur."

Lesley Bishop of Rofs, at the Reformation, is reported to have said, "That in the canon law he found nothing but *Nolumus et volumus.*" He must have studied it with little attention.

* *Constitutions of Sarum, c. 20.*

† *Constitutions of Sarum, c. 21.* from thence I have supplied the word [teneros] which was wanting.

De sacramento confirmationis.

LVI. **Q**Uum sacramenta confirmationis ad robur dantur pueris, sacerdotes cum audierint adventum Episcopi, moneant populum, ut deferant pueros ad Episcopum confirmandos *. Adultus autem, si tempus habuerit confitendi, prius confiteatur, quam confirmetur. Hoc etiam laicis intimetur, quod contrahitur in hoc sacramento, sicut in sacramento baptismatis, proximitas spiritualis inter illos qui suscipiunt pueros, et illos quorum sunt pueri, et etiam illorum pueros †. Mas vero marem coram episcopo teneat, et fœmina fœminam.

De sacramento pœnitentiæ.

LVII. **Q**Uum remissionem peccatorum per veram confessionem consequimur, præcipimus, ut sacerdotes, in danda pœnitentia, diligenter attendant qualitatem personæ, et quantitatem delicti, locum, tempus, causam, et moram in peccato factam, et alias peccati circumstantias; similiter devotionem pœnitentis et signa contritionis attendant ‡. In audiendo confessionem sacerdos habeat vultum humilem, et oculos ad terram demissos, nec sæpius indiscretè faciem respiciat confitentis, et maximè mulieris, et patienter audiat quicquid dixerit, et in spiritu lenitatis eum supportet, et

* The sacrament of confirmation is held to be greater than the sacrament of baptism; for that a *priest* bestows baptism, but it is a *bishop* who bestows confirmation, *Decr. part 3. dist. 5. c. 3.*

† Concerning this spiritual adoption and proximity, and the strange consequences thence arising, see *Decr. part 2. caus. 30. passim*. This 56th canon also is taken from the *Constitutions of Sarum*.

‡ *Constitutions of Sarum, c. 24.*

cū pro posse persuadeat pluribus modis, quod integrè, et de omnibus peccatis pœniteat et confiteatur. Aliter vero confessio non est vera. Præterea, inquirat usitata singulatim; inusitata autem non nisi a longè per circumstantias; ut sic expertis detur materia confitendi, et inexpertis nulla detur occasio delinquendi. Personarum nomina cum quibus peccaverit, non inquirat; sed per confessionem potest inquirere, utrum laicus, vel clericus, sacerdos, vel diaconus, vel monachus, fuerit*. Moneantur autem laici in principio Quadragesimæ confiteri, et cito post lapsuras: præcipiant etiam parochianis suis, ut postquam ad annos discretionis pervenerint, omnia peccata sua semel in anno confiteantur proprio sacerdoti, vel alteri ad ejus licentiam; et reverenter, ad minus in Pascha eucharistæ, sacramentum percipiant, nisi fortè de consilio proprii sacerdotis ob aliquam rationabilem causam, ad tempus, ab ejus perceptione duxerint abstinendum; alioquin et vivi ab ingressu ecclesiæ arceantur, et mortui Christianâ sepulturâ careant. Caveat autem sacerdos omnino, ne verbo aut signo, aut aliquo modo, peccatorem prodat; sed si prudentiori consilio indiguerit, illud absque expressione personæ ulla cautè inquirat. In dubiis vero semper consultet Episcopum, aut discretos viros, quorum consilio certificatus securus solvere valeat vel ligare.

De sacramento Eucharistiæ.

LVIII. **E**Xcellentissimum Dominici corporis et sanguinis sacramentum cum reverentia, devotione, et honore, tractetur. Et propter hoc districtè præcipimus, quod sacerdotes circa ea quæ ad substantiam sacramenti, corporis et sanguinis Domini, pertinent, sint diligentes, provisuri quod eucharistia in munda pyxide conservetur: nec ultra septem dies conserventur hostiæ consecratæ, sed qualibet die Dominicâ innoventur; ita quod post receptionem hostiæ recenter consecratæ, aut susceptionem sanguinis Dominici, re-

* *Constitutions of Sarum, c. 27.*

servatæ hostiæ a celebrante, missam fumantur, vel aliquo bonæ conscientiæ. Habeaturque certitudo circa hostiam consecratam, ut non fumatur non consecrata pro consecrata *, nec consecrata iterum consecretur. Sacerdos autem ministraturus diligenter consideret, ut hostia de puro frumento sit, et integra, et integrum habeat circum, et quod major pars vini, et modica aquæ, quæ a vino absorberi possit, ponantur in calice. Caveat ne vinum sit acetum, vel corruptum. Item præcipimus, ut sacerdotes habeant canonem correctum, et verba canonis in missa rotundè dicantur, et distinctè. Omnes horæ, et omnia officia, apertè, et distinctè, dicantur; ita quod præ festinatione nimia verba non præcidantur nec syncompentur †.

De celebratione missarum.

LIX. **I**tem in celebratione missæ, hostiam consecratam, pacem daturus sacerdos ori suo non apponat, quod ante perceptionem eam ore tangere non debet; si vero de patena, sicut quidam faciunt, eamumat, post celebrationem missæ, tam patenam quam calicem faciat aquâ perfundi, vel solum calicem, si eam de patena nonumat: habeatque sacerdos juxta altare pannum mundissimum, alio panno circumdatum undique, et honestè ac decenter coopertum, in quo, post sumptionem sacramenti salutaris, digitos cum labiis tergat ablutos ‡. Habeatque sacrarium super se honestum operculum. Hostiam vero non elevent antequam ista verba prædicantur: "Hoc est corpus meum." Item si sacerdos necesse habuit bis in die celebrare casu, quod nisi in die nativitatis, vel re-

* *Constitutions of Sarum*, c. 35. The MS. here has *ante sumptionem*; the *Constitutions of Sarum* have *aut susceptiones*; from the two I have composed what seems a more probable reading than either.

† *Constitutions of Sarum*, c. 36.

‡ *Constitutions of Sarum*, c. 38.

surrectionis Dominicæ, vel quum aliquod corpus præsens est in ecclesia tumultuandum, vel aliqua evidens urgens necessitas, fieri prohibemus; post primam celebrationem, et corporis et sanguinis sumptionem, nihil in calicem fundatur, quod a celebrante sumatur, sed tantum post celebrationem subsequentem. Post vero celebrationem diligenter absorbeantur stillæ de calice, et quod fuerit superfluum in calice, digitis sumatur ab aliquo bonæ conscientiæ, vel reservetur in vasi mundo, ad id specialiter deputato; et post celebrationem secundæ missæ sumatur a sacerdote*.

De custodia Eucharistiæ, et visitatione infirmorum.

LX. **H**IS addimus etiam †, quod cum eucharistia ad ægrotum fuerit deferenda, habeat sacerdos pyxidem mundam, in qua sit bursa mundissima, et in ea deferat corpus Dominicum ad ægrotum, linteo mundo superposito ‡, lucernâ precedente, et tintinnabulo, ad cujus sonitum excitetur devotio fidelium, nisi æger fuerit valde remotus ||. Habeatque sacerdos stolam quandam, quum vadit ad ægrotum; et si ægrotus remotus non fuerit, in superpellicio

* *Constitutions of Sarum*, c. 38. That 38th chapter is imperfect; but the blanks may be supplied from the 19th canon of the Scottish church.

† This also is taken from the *Constitutions of Sarum*, c. 39. with the addition of the words, "*Si aeris temperies patiatur.*"

‡ The reason of the linen-cloth is given *Decr. 3. dist. 1. c. 146.* "Consulto omnium statuimus, ut sacrificium altaris, non in serico panno, aut tincto, quisquam celebrare præsumat: sed in puro linteo ab Episcopo consecrato, terreno scilicet lino procreato atque contexto, sicut corpus Domini nostri Jesu Christi in sindone lineâ mundâ sepultum fuit." So that a cloth of vegetable substance is required; but one of an animal substance is anathematized.

|| Because, if the sick person was at a distance, there would have been an unnecessary consumption of wax-candle not paid for. It is remarkable, that this canon is directly contrary to a canon of Honorius III. *Decr. Greg. 1. 3. tit. 41. c. 10.*; which has these words: "*Semper lumine præcedente, cum sit candor lucis æterna.*"

decenter ad ipsum accedat, si aëris temperies patiatur. Habeatque vas argenteum, vel stanneum *, ad hoc specialiter deputatum, quod deferat secum ad ægrotum, ut in eo valeat dare ægro, post sumptam eucharistiam, suorum [loturam] † digitorum. Deferat autem sacerdos corpus Dominicum ante pectus suum reverenter.

De Extrema Unctione.

LXI. **M**oneant diligenter sacerdotes infirmos parochianos suos a quatuordecim annis, et supra, ad extremam unctionem, et omnibus petentibus, et pœnitentibus, gratis et libenter exhibeant hoc sacramentum. Item denunciât eis, quod hoc sacramentum potest iterari, scilicet in qualibet infirmitate, de qua timetur metus mortis; et quod post hoc sacramentum licet converti ad opus conjugale, et ad alia ut prius licita. Oleum autem infirmorum cum

* "*Vas argenteum vel stanneum,*" *Decr. p. 3. dist. 1. c. 44.* "Vasa in quibus sacrosancta conficiuntur mysteria, calices sunt et patenæ: de quibus Bonifacius martyr, et Episcopus, interrogatus, Si liceret in vasis ligneis sacramenta conficere? respondit, Quondam sacerdotes aurei ligneis calicibus utebantur; nunc, e contrario, lignei sacerdotes aureis utuntur calicibus." The meaning of this Scottish saint is obvious: "The sincerity of the heart is more valuable in the sight of God, than the ceremonies of worship. The parade of religion has increased, while the knowledge of the truth, and the fervency of devotion, have diminished." From such premises, the natural conclusion is, that it matters not whether the instruments of religion be gold or silver, brass or tin, glass or wood. The conclusion, however, of the Canon law, is just the reverse: "Deinde Urbanus Papa omnia ministeria sacra fecit argentea: *in hoc enim, sicut et in reliquis cultibus, magis et magis per incrementa temporum decus succrevit ecclesiarum.* Nostis enim diebus, qui servi patrisfamilias sumus, ne decus matris ecclesie imminuat, sed magis cumuletur et amplificetur, statuimus, ut deinceps nullus sacerdos sacrum mysterium corporis et sanguinis Domini nostri Jesu Christi in ligneis vasculis ullo modo conficere præsumat; ne unde placari debet, inde irascatur Deus."

† The word *loturam* is wanting in the MS. I have supplied it from the *Constitutions of Sarum.*

reverentia deferatur ad infirmos, et eos cum honore sacerdos ungat, et orationum celebritate, quæ ad hoc sunt ordinatæ, et nihil inde, nec pro aliis sacramentis exigatur.

De vita et honestate Clericorum.

LXII. **U**T clericorum mores et actus in melius refoventur, continenter et caste vivere studeant universi, præsertim in sacris ordinibus constituti, ab omni libidinis vitio præcaventes, et crapulis et ebrietate omnes clerici diligenter se abstineant; commercia secularia non exercent maxime inhonestæ; tabernas evitent prorsus, nisi causâ necessitatis, forte in itinere constituti. Coronam et tonsuram habeant competentem. Sacerdotes deferant cappas clausas, nisi justitia timoris exegerit habitum mutare [vel] transformare. Clerici vero cæteri in habitu, in gestu, et in omnibus honestè se habeant, ab illis se personis penitus abstineant, quæ in generali concilio continentur. Sacerdotibus vero præcipuè, et personis sub periculo officii et beneficii, districtè præcipimus, ut continenter et honestè vivant, concubinas suas procul expellant, et nullam familiaritatem cum eis de cætero habeant, nec in domibus propriis, nec in alienis *, nisi velint officiis et beneficiis, contra hoc agendo, privari. Advocatis vero, si sint clerici infra sacros [ordines], vel sacerdotes in foro seculari, nisi proprias causas prosequantur, vel miserabilium personarum, præcipimus, ut officiis ecclesiasticis, divinis, et aliis bonis studiis, se exercent diligenter; divinum vero officium, nocturnum pariter et diurnum, quantum Deus dederit, studiose, et devote celebrent. Ad hæc præcipimus, ut quælibet ecclesia habeat calicem argenteum, cum vasis decentibus et honestis; sindonem mundam, et candidam, amplitudinis congruentis, lintheamina, et omnia alia ornamenta, quæ ad altaris spectant officium, habeant competentia, et libros ad psallendum idoneos, et legendum, et fa-

* The same things are prescribed by canon 14. Hence it may be presumed, that all the canons were not promulgated at one time.

cerdotalia indumenta sufficientia pariter et honesta; et quod nimis absurdum est, in sacris sordes negligeri quam dedecuerit in profanis *, districtè præcipimus, quod vasa ministerii, et vestimenta ministrorum, et pallia altaris, necnon et ipsa corporalia, nitida et munda custodiantur; ne, propter quorundam incuriam, vel vestimentorum turpitudinem, vel sorditatem, quibusdam sint horrore †. Cereus quoque paschalis quolibet anno de nova cera fiat, et, cera de, qua factus fuerit, post Pentecosten ad ecclesiæ usus convertatur, nec inde amoveatur.

Quæ sunt relinquenda successori.

LXIII. **A**D hæc sacrae synodi approbatione statuimus, quod si rector alicujus ecclesiæ decesserit, et ecclesia sua relicta fuerit sine indumentis sacerdotalibus competentibus, vel sine libris, vel sine utrisque, vel si forte domos ecclesiæ reliquerit dirutas, vel ruinosas; de bonis ejus ecclesiasticis tanta portio deducatur, quæ sufficiat ad reparandum hæc, et defectus ecclesiæ supplendum ‡. Utenfilia quoque domus successori suo relinquat ||.

Quod

* This passage is awkwardly and ungrammatically borrowed from 4. *Later. Concil.* c. 19. "Nimis enim videtur absurdum in sacris sordes negligere, quæ dedecere etiam in profanis."

† This also is derived from the same source: "Vasa ministerii, et vestimenta ministrorum, ac pallia altaris, necnon et ipsa corporalia, tam immonda relinquunt, quod interdum aliquibus sunt horrore." *Ibid.*

‡ *Constitutions of Sarum*, c. 42.

|| The particular utensils are specified in the chartulary of Moray, vol. 1. p. 68. "Hæc sunt utensilia dimittenda a prædecessore suo successori in ecclesia Moraviensi, ritè, et canonicè intranti, et omnibus beneficiatis per eandem dyocesim."

"Imprimis, In aula, [hall or dining-room], unam mensam sufficientem, cum trestillis, [a board with supporters], unam pelvem cum lotario, [ewer], et unam mappam cum manutergio."

"Item,

Quod novi census non imponantur ecclesiæ.

LXIV. **S**icut in generali concilio est statutum *, firmiter prohibemus, ne novi census imponantur ecclesiis, nec veteres augeantur; quodcunque contra hoc actum est, sicut in eodem concilio cautum est, irritum habeatur. Noverint etiam præsentati quod de cætero jurabunt, quod nec promissio, nec pactio aliqua, interfit inter ipsos et præsentatores, propter beneficium habendum, et maximè de augenda pensione.

De Matrimonio.

LXV. **Q**uum matrimonium ab ipso Deo in paradiso noscitur institutum, et quoad originem primum est inter alia sacramenta; ut liberius et canonice de cætero contrahatur, præcipimus, ut nulli detur fides de matrimonio contrahendo, nisi coram sacerdote, et tribus vel quatuor viris fide dignis, ad hoc specialiter convocatis. Nullus sacerdos præsumat aliquas personas matrimonialiter conjungere, nisi prius ternâ denunciatione in ecclesia publicè et solenniter præmissâ, secundum formam concilii generalis; ita quod qui voluerit, et valuerit, legitimum impedimentum opponat. Inhibeant etiam sacerdotes sub pœna excommunicationis, ne quis celet impedimenta matrimonii malitiose, et ne quis malitiosè matrimonium impediat. Ipse etiam presbyter nihilominus investiget,

" Item, in coquina, unam ollam æream, unam patellam, sufficentes, unam tripodem, vel [probably et unam] cathenam, quæ dicitur *Ketylcrook*, unum mortarium cum pestello."

" In brasina, unum plumbum cum çuppa, quæ dicitur *Mash-fatte*, et algeam, vulgari-
ter *le trouch*, unum fattum, et unum *sa*, et unum *barell*."

" Et sciendum quoque, dicta utensilia sunt appretianda secundum valorem beneficii."

* 3. *Later. Concil. c. 7. c. 19.* 4. *Later. Concil. c. 46.*

utrum aliquod impedimentum obstat. Cumque apparuerit probabilis conjectura contra copulam contrahendam, contractus indicatur expresse, donec quod fieri debeat super eo, manifestis constiterit documentis *. Clandestina quoque matrimonia fieri prohibemus, inhibentes ne quis sacerdos talibus interesse præsumat; et qui contra hæc fecerit, canonicè puniatur. Denuncient etiam presbyteri parochianis suis, quod matrimonium prohibitum est infra quartum gradum consanguinitatis, vel affinitatis: ultra quartum gradum legitimè contrahitur †. Inter compatres, et commatres, et inter filium et filiam, et inter susceptum et susceptam, et filium et filiam suscipientis, matrimonium interdiciamus. Statuimus etiam, ut capellani parochianos suos publicè fornicarios statim compellant, cum fornicariis suis contrahere, aut eas simpliciter abjurare, nullâ conditione adjectâ.

Tuendi sunt fugientes ad ecclesiam.

LXVI. **F**irmiter prohibemus, ne quis fugientes ad ecclesiam, quos ecclesia debet tueri, inde violenter abstrahat, aut ipsos circa ecclesiam obfideat, vel eisdem subtrahat victualia.

Quod honestè serventur ecclesiæ.

LXVII. **P**rohibemus etiam, ne choreæ, vel turpes et inhonesti ludi, qui ad lasciviam invitant, in ecclesiis vel cœmeteriis fiant, nec causæ seculares, maximè in quibus agitur de iudicio san-

* This is almost in the words of 3. *Later. Concil.* c. 51.

† The reason of this limitation is to be found in 3. *Later. Concil.* c. 50. "Quaternarius enim numerus bene congruit prohibitioni conjugii corporalis, de quo dicit Apostolus, quod vir non habet potestatem sui corporis, sed mulier; neque mulier habet potestatem sui corporis, sed vir; quia quatuor sunt humores in corpore, quod constat ex quatuor elementis."

guinis, in eisdem tractenter *. Statuimus etiam, ut cœmeteria per circuitum honestè claudantur, ne immundis et brutis animalibus pateat ingressus. Ecclesiæ quoque integrè et honestè sine ruina custodiantur.

[Qui] excommunicandi sunt quater in anno.

LXVIII. **E**Xcommunicentur quater in anno per totam diœcesim fortarii et incendiarii, manifesti usurarii, malefici, raptores publici, malitiosè impediētes testamenta legitimè facta, scienter perjuri, per quos aliquis amittit hæreditatem, beneficium ecclesiasticum, vel terrenum.

Dandæ sunt decimæ de omnibus quæ renovantur.

LXIX. **I**tem decimæ reddantur de omnibus quæ renovantur per annum †, videlicet de agricultura, negotiationibus, fœno, lino, lana, et lacte, et de proventibus molendinorum, et de omnibus aliis honestis fructibus, secundum consuetudines approbatas hactenus et obtentas.

Quot collectæ dicendæ sunt in missis.

LXX. **S**acræ synodi approbatione salubriter duximus statuendum, ut per diœcesim nostram in celebratione missarum, præterquam in festis duplicibus, dicantur quinque [q. duo] collectæ; una de pace ecclesiæ, scilicet, "Ecclesiæ tuæ, quas, Domine, preces,"

* *Constitutions of Sarum*, c. 76. That chapter is imperfect, and may be amended from the 67th canon of the Scottish church.

† *Constitutions of Sarum*, c. 31.

etc.; alia pro Domino nostro Rege, et Regina, et eorum filiis, scilicet,
 "Deus, in cujus manu corda sunt regum."

De visitatione infirmorum.

LXXI. **I**tem, cum presbyterum ad infirmum vocari contigerit, si audita ejus confessione fortè testari voluerit, ipsum diligenter moneat et inducat, ut, secundum facultates suas, respiciat fabricam ecclesiæ cathedralis, cum ab ipsa parochiales ecclesiæ documenta salutis accipiant. Fiant in hujus executione statuti per superiorem prout expedire viderit.

Monitionem faciendo leprosis.

LXXII. **I**tem de his qui lepræ morbum incurrunt, et de consuetudine generali a communione hominum separantur, statuimus, ut cum tales ad loca se transferant solitaria, moneantur efficaciter a presbyteris in eorum recessu, ut parochialem ecclesiam respiciant, secundum suarum exigentiam facultatum; ad quod si induci nequiverint, nulla eis coactio inferatur, cum afflictis addi non debeat afflictio, sed ipsorum miseriis sit potius miserendum.

Quod perjuri in causa matrimoniali mittendi sunt ad Episcopum.

LXXIII. **I**tem statutum a prædecessore nostro editum innovando firmiter prohibemus, ne presbyter parochialis aliquem in causis matrimonialibus, aut aliis, spontaneè pejerantem, ad confessionem suscipiat, sed omnes tales ad nostram præsentiam veniant, a nobis poenitentiam recepturi *.

* This is, probably, a synodical canon established in some particular diocese, not a canon established in a provincial council. The same appears to be the case as to some of the preceding ones.

De exequiis mortuorum.

LXXIV. **I**tem ad funera et exequias mortuorum laicorum cantus vel choreas fieri prohibemus, cum non deceat de aliorum fletu ridere, sed ibidem potius de hujusmodi fit dolere.

Quod luctæ vel ludi non fiant in ecclesiis, nec in cœmeteriis.

LXXV. **H**uic etiam prohibitioni duximus admittendum, ut in aliquibus festivitibus infra ecclesias vel cœmeteria luctæ vel ludi de cætero fieri non permittantur; et qui ter monitus a sacerdote loci, ab hujusmodi cessare noluerit, ingressus ecclesiæ interdicatur eidem. Qui suspensus a sua insolentia non destiterit, excommunicationis sententiæ innodetur.

Quod sacramentum Eucharistiæ sine oblatione celebretur *.

LXXVI. **I**tem audivimus a quibusdam, cum in die Paschæ fideles Christi suscipere debent eucharistiæ sacramentum, quidam presbyteri, quod dolentes referimus, illud præstare denegant impudenter, nisi prius oblationes suas tunc porrigant ad altare, et eodem die exactiones faciant a laicis, corpus Christi tenentes in manibus, ac si dicerent, " Quid mihi vultis dare, et ego eum vobis tradam ? " Quod amodo fieri prohibemus, sub obtestatione divini iudicii districtius †, permittentes ut presbyteri parochianos suos tem-

* The title is wanting in the M. S. I have endeavoured to supply it in the Latin of that age.

† The same thing was provided by the *Council of Oxford*, c. 29. and by the *Council of London*, c. 4. This canon however is more explicit, and describes the manner of the ex-

pore congruo ad solutionem decimarum et jurium aliorum per censuram ecclesiasticam præviâ ratione compellant.

Excommunicandi sunt, qui prohibent suos ne emant decimas.

LXXVII. **I**tem quorundam relatu nobis innotuit, quod quidam domini feodorum homines sub se manentes a rectoribus ecclesiarum decimas emere non permittant, cum eas oporteat vendere, vel ponere ad firmam, et in locis sylvestribus remotis colligi nequeant ab eisdem. Hoc de cætero modis omnibus fieri prohibemus, decernentes, ut qui talia commiserint, si commoniti non destiterint, a suis presbyteris excommunicationis sententia percellantur.

De locato et conducto.

LXXVIII. **I**tem firmiter prohibemus, ne de cætero ad firmam ecclesiæ conferantur, nisi de conscientia Episcopi vel Archidiaconi fiat conventio, ex qua plurimæ literæ conscribantur, quarum una remaneat penes ipsos. Item firmarius ecclesiæ eam alii non tradat ad firmam, cum negotiatio quædam videatur sub obtentu secularis commodi, et negotiatio clericis sit penitus interdicta.

Quod rectores ordinentur, et serviant ecclesiis.

LXXIX. **I**tem irrefragabili constitutione sancimus, ut rectores ecclesiarum ad primos ordines veniant ordinandi, ita quod quamcito fieri poterit, commodè ordinentur. Qui parochialem habet ecclesiam amodo per seipsum illi deserviat, in ordine quem ipsius ecclesiæ cura requirit, nisi prius in eadem vicarium habuerit canonicè institutum. Qui vero ex dispensatione plures ecclesias habuerit parochiales, uni earum deserviat, idoneis et perpetuis

tais vicariis in aliis constitutis. Et qui nec vicarium habuerit, nec residere voluerit, ille se sciat Lateranensis concilii auctoritate privatum *, liberè alii conferenda, qui, quod dictum est, velit et valeat adimplere.

Quod laici non teneant placita in ecclesia.

LXXX. **S**UB interminatione anathematis firmiter prohibemus, ne laici teneant placita sua secularia in ecclesiis, vel coemeteriis, et ne laici secus altare, quum sacra mysteria celebrentur, stare vel sedere inter clericos præsumant, excepto Domino Rege, et Majoribus regni, quibus propter suam excellentiam in hac parte duximus deferendum.

Quod focariæ concubinæ sacerdotum, vel clericorum beneficiatorum, non admittantur in ecclesiam.

LXXXI. **I**TEM prohibemus, sub interminatione anathematis, ne focariæ concubinæ sacerdotum, vel clericorum beneficiatorum, vel infra sacros ordines positorum, admittantur in ecclesiis ad aquam benedictam, vel pacis osculum†, vel ad aliquam communionem fidelium, nec aliæ fornicariæ ab aliquibus in domibus, vel in terris, sciepter et prudenter receptentur.

Quod matrimonia sine bannis non contrahantur.

LXXXII. **I**TEM prohibemus, ne qui matrimonium contrahant sine terna denunciatione solenniter facta in ecclesia ubi degunt, si in eadem parochia manent; si in diversis, in utraque de-

* 3. Later. Concil. c. 13.

† Constitutions of Sarum, c. 8.

nuncientur sponsalia; et ne contrahantur sine fidelibus testibus et legitimis. Item prohibemus, ne matres aut nutrices teneros infantes secum in cubilibus collocare præsumant, propter frequentiam emergentium periculorum.

De potibus dandis ægrotis.

LXXXIII. Item prohibemus, ne aliquis medicinæ ignarus sub pallio medicinæ potationes herbarum mortiferarum alicui conferat ægrotanti, nec aliquod fortilegium faciat vel exerceat.

De capellanis conducendis.

LXXXIV. Item prohibemus, ne quis recipiatur capellanus ad curam parochiæ, ibidem moram facturus, ad minus quam per unius anni spatium; nec inde sine rationabili causa Archidiacono exposita recedat. Discedentem vero absque literis Archidiaconi nullus audeat recipere aut tenere. Explicit.

Ex auctoritate Dei Patris omnipotentis, et Filii, et Spiritus Sancti, necnon Dei genetricis Mariæ, et Sancti Michael. Archangeli, et omnium Angelorum et Archangelorum, et Sancti Johannis Baptiste, et omnium Patriarcharum et Prophetarum, et Sanctorum Apostolorum, et Evangelistarum, Innocentium, Martyrum, Confessorum, atque Virginum, et omnium Cœlestium Virtutum, et Sanctorum Canonum, et nostri Ministerii, excommunicamus, dampnamus, anathematizamus, et a liminibus Sanctæ Matris Dei ecclesiæ sequestramus, omnes conspiratores contra proprios Episcopos, vel alienos regni, seu alios prælatos, omnes conspiratoribus consentientes, eo quod omnes tales schismatici sunt, et infames. Excommunicamus etiam omnes qui causâ matrimoniali, vel aliâ falsum perhibent testimonium scienter; exceptiones malitiosè opponunt, vel opponi procurant in causa matrimoniali.

matrimoniali. Excommunicamus omnes illos qui pacem Regis et regni perturbant, et omnes illos qui odii vel lucri causâ, aliis crimina imponunt, per quæ ipsorum fama lædatur, aut pro quibus mors, vel exilium, vel membrorum mutilatio, vel exhereditatio, seu bonorum spoliatio, sequi debeant, si judicialiter convincantur. Excommunicamus omnes detentores decimarum suarum injustè, et omnes illos qui decimas proprias, seu alienas, præter voluntatem dominorum ipsarum occupant, et detinent violenter, seu rectores ecclesiarum, vel vicarios, aut eorum procuratores, quacunque calliditate impediunt, vel perturbant, quominus decimis suis ad suam liberè disponere valeant voluntatem; necnon et usurarios manifestos, raptores publicos, impediētes testamenta legitimè facta, incendiarios, libertatum ecclesiasticarum, et immunitatum, in terris vel in aquis, seu in nemoribus aut pascuis, aut quibuscunque aliis rebus, perturbatores; et violatores, aut eorum auctores, consilium, auxilium, et favorem eis præstantes; necnon sortiarios, et omnes eos fovētes et protegentes, et in suis maleficiis manutēnentes, ac etiam cum eis in maleficiis suis communicantes; invasores et raptores bonorum ecclesiasticorum; seu in terris eleemosinariis nonnulla vi præter voluntatem dominorum capientes, exceptis Domini Regis et Reginæ, ac filii sui, servitoribus, pro earundem necessariis, cum ea alibi invenire non potuerunt, accipientibus, dummodo justum pretium solvant pro eisdem. Maledicti sint omnes prænotati; maledicti sint interius et exterius; a planta pedis usque ad verticem capitis, cum Datan et Abiron, quos terra vivos absorbit; fiant dies eorum pauci, et dominationes eorum accipiant alii, filii eorum [sint] orphani: et sicut hæc lucerna in præsentī extinguitur, sic extinguantur lucernæ eorum ante Viventem, in secula seculorum, et demergantur in inferno animæ eorum, nisi resipuerint, et ad satisfactionem, et emendationem venerint. Fiat, fiat. Amen.



HISTORICAL MEMORIALS
CONCERNING THE
PROVINCIAL COUNCILS
OF THE
SCOTTISH CLERGY,
FROM THE EARLIEST ACCOUNTS
TO THE ÆRA OF THE REFORMATION.

By Sir DAVID DALRYMPLE.

*Si delectamur quum scribimus, quis est tam invidus qui ab eo nos abducat?
Im laboramus, quis est qui aliene modum statuatur industrie? CICERO.*

EDINBURGH:

Printed by A. MURRAY and J. COCHRAN.

Sold by J. BALFOUR, and other Booksellers.

MDCCLXIX.

HISTORICAL MEMORIALS

to which the following are the names of the persons who have been instrumental in the collection of the materials for this work.

THE HON. THE SECRETARY OF THE PROVINCIAL COUNCIL.

THE HON. THE MEMBER FOR THE DISTRICT OF THE PROVINCIAL COUNCIL.

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INDICATED BY THE

HISTORICAL MEMORIALS

CONCERNING

The Provincial Councils of the Scottish Clergy,

From the earliest accounts to the æra of the Reformation.

THE history of the church of Scotland during remote ages, is involved in impenetrable obscurity. How the bishops of that church were originally elected, and what was the extent of their jurisdiction, has been the subject of many a perplexed dispute. Each disputant came ready prepared with his hypothesis, and to it the facts, being few and dubious, were easily adapted. I do not enter into this field of controversy,—my purpose is, to collect some *Historical Memorials concerning the Provincial Councils of the Scottish Clergy, from the earliest accounts down to the æra of the Reformation*. Most of the incidents which I am to relate are little known; some of them are curious; and, as I have no hypothesis to maintain, they will all be impartially related.

The first notice that I have discovered of a provincial council in Scotland is this: "Constantinus Rex, et Kellachus Episcopus, leges "disciplinasque fidei, jura ecclesiasticorum evangeliorumque pariter cum Scotis in *Colle Credulitatis*, prope regali civitate Scoan, de-
"voverunt custodiri: ab hoc die collis hoc [nomen] meruit." i. e. *Collis Credulitatis* *.

Innes,

* MS. Cod. 3120. *Bibl. MSS. Colbert, Paris*; quoted by Innes, and from him by Wilkins, *Concil.* vol. 1. p. 204. The learned reader will perceive, that I say nothing of the

Innes, and after him Wilkins, hold this to have been a provincial council. I take it to have been a joint assembly of the laity and clergy, wherein a *national confession of faith* was framed and promulgated, at a place near Scone, termed from that event, *Mons Credulitatis* *.

But leaving the ages of conjecture and fable, let us proceed to those where records and history will be our guides.

A.D. 1126, John of Crema, a cardinal priest, under the title of *S. Chrysogoni*, legate from the Pope, held a council at Roxburgh. The question of jurisdiction between Thurstan Archbishop of York and the Scot-

the famous *Macalpine laws*. Innes seems to abandon them, in his dissertation prefixed to Wilkins, *Concil.* vol. 1.; but in his *Critical Enquiry*, p. 587. he seems willing to adopt them again as genuine. He argues thus:—When Kenneth united the Scottish and Pictish nations, he must have established laws respecting the church as well as the state. The laws respecting the church must have been established in a provincial council, by the intervention of bishops. Now, some of the laws of Kenneth respect the church, therefore they were established in a provincial council by the intervention of bishops.—This argument supposes the laws preserved under the name of Kenneth to be indeed genuine.

Wilkins, *Concil.* vol. 4. p. 791. has published certain proceedings of councils in the reign of Malcolm III. A.D. 1076, transcribed from the life of St Margaret of Scotland, *Act. SS. Bolland.* t. 2. p. 330. The following passage will shew that it was not a council, but a conference, which Queen Margaret held. “Cum enim contra rectæ fidei regulam, et sanctam universalem ecclesiæ consuetudinem, multa in gente illa fieri perspexisset, crebra concilia statuit, ut, quoquo modo valeret, ad veritatis viam errantes, Christo donante, reduceret: quorum conciliorum illud principalius esse constat, in quo sola, cum paucissimis, contra perversæ consuetudinis assertores, gladio Spiritus, quod est verbum Dei, triduo dimicabat. Crederes alteram Helenam ibi residere; quia sicut illa quondam scripturarum sententiis Judæos, similiter nunc et hæc regina convicerat erroneos. Sed in hoc conflictu Rex ipse adjutor ei præcipuus residebat; quodcumque in hac causa illa jussisset dicere paratissimus et facere: qui quoniam Anglorum linguam æquè ac propriam noverat, vigilantissimus in hoc concilio utriusque partis interpres extiterat.”

* It was possibly that same *Mons Credulitatis* which some antiquarians believe to have been retained by Malcolm Mackenneth when he generously parcelled out all Scotland among his vassals. “Dedit et distribuit totam terram regni Scotiæ hominibus suis; et nihil sibi retinuit in proprietate, nisi regiam dignitatem, et Montem Placiti in villa de “Scona.” *LL. Malcolm*, c. 1. § 1. 2.

rish bishops was agitated in this council. Honorius II. by his bull, reserved the final determination to the judgement of the Papal see.—A superfluous reservation.—There was no reason for supposing that the Archbishop of York would voluntarily relinquish, or that the Scottish bishops would voluntarily acknowledge, the disputed jurisdiction. What might have been foreseen happened: nothing was done in this harmless council*.

A. D. 1138, Alberic Bishop of Ostia, Legate from the Pope, assembled a council of the Scottish prelates and nobles at Carlisle. "In this council of three days endurance," says a cotemporary historian, "he corrected whatever required correction, and enacted " whatever was fit to be enacted." The historian has left his readers to divine the particulars. For supplying this defect, it may be observed, that the administration of this legate was remarkable in two respects: 1. John Bishop of Glasgow had retired among the Benedictine monks, and the Legate obliged him to resume the duties of his episcopal office. 2. The Legate made a singular treaty with the Scots and Picts, whereby he took them engaged, "neither " to violate churches, nor to murder old men, women, and children †."

A. D. 1176, Huguccio, a cardinal deacon, under the title of *Sancti Angeli*, Legate from the Pope, assembled the Scottish prelates

* *Simon Dunelm* apud X. scriptores, p. 252. The bull of Honorius, addressed to so religious a prince as David I. is worthy of observation. "Nobilitati tuæ rogando mandamus, ut dilectum filium nostrum Johannem Cardinalem, cui vices nostras in partibus illis commisimus, reverenter suscipias et honores; *episcopos* etiam terræ tuæ, cum " ab eo vocati fuerint ad concilium suum, *facies convenire.*" *Wilkins*, Concil. vol. 1. p. 407.

† *Job. Prior Hagustaldensis*, apud X. scriptores, p. 264. "Per triduum cum Episcopis et Principibus Scotiæ, qui ei ex regio præcepto ibi occurrerant, quæ corrigenda erant, correxit, et quæ statuenda erant, statuit."—"Scottos quoque, et Pictos in hoc " sibi acquiescentes, habuit, ut nullus eorum ecclesias violare, fœmineo sexui, vel pueris, " vel senibus, cædem inferre, ulterius præsumeret."

at Northampton*. He would have induced them to acknowledge the jurisdiction of the Archbishop of York; nevertheless they resolutely maintained the independency of their national church. It may be doubted whether this assembly, brought together in a foreign country, and for a special political purpose, ought to be numbered among the provincial councils of Scotland.

This cardinal legate is detested by the English historians of his age, for the concessions which he made to Henry II. of England. One historian terms him "a limb of Satan, and the very hireling lifeguard-man of Satan, at once from a shepherd become a robber, who fled at the approach of the wolf, and abandoned the sheep committed to his charge by our Lord the Pope†."

Another historian reproaches him, "for that preferring the favour of the King to the *cause of truth*, he consented to the trial of clergymen in a secular court, for hunting some *pitiful little animals*." By the *cause of truth*, is meant the darling claim of clerical immunities; by *pitiful little animals*, the deer which ecclesiastics were wont to steal out of the Royal forests. But it happened that sovereign princes, *mighty hunters* in those days, were as careful of

* This legate is sometimes called *Hugezoun* by the English writers. His name appears to have been *Huguccio*, or *Hugo Petrileonis*; see *Zabarella*, *Aula Heroum*, p. 233.—*R. Hoveden*, p. 548. edit. 1601, calls him *Cardinalis Sancti Michaelis de Petra Leonis*; thus interweaving his name with his title. It is well known that *Sanctus Michael* and *Sanctus Angelus* are synonymous.

Concerning the council which this legate assembled at Northampton, Boece, *Scot. Hist.* l. 13. p. 273. thus speaks in his careless and incorrect manner: "Episcopus convocavit;" but Brompton, with truth and precision, adds, "cum abbatibus et prioribus;" *Chron.* p. 1168.

† "Ecce membrum Satanæ, ecce ipsius Satanæ conductus satelles, qui tam subito de pastore raptor factus, videns lupum venientem, fugit, et dimisit oves sibi a Domino Papa commissas;" *Brompton*, p. 1107. It is difficult to express in English what Brompton probably meant by the phrase *conductus satelles*. In that age there were certain execrated banditti, called *Brabançons*, *conducti satellites*, whom the European princes opposed as a temporary counterpoise to the feudal armies. To one of those *Brabançons*, in a more dishonourable service, does Brompton compare the legate.

their

their game as the clergy were of their privileges. "Is this," continues the historian, "that ample security which we enjoy under the protection of the Roman see, to have ecclesiastics dragged in to a secular judicature, and *there* condemned by the sentence of courtiers, on account of some pitiful animals! But the King's gold dazzled our Roman, unmindful of the example of the holy martyr St Thomas *."

The same historian asserts, that the legate accepted of presents from every quarter. "He came," says he, "to root out and to plant, and therefore he rooted out the coin from mens purses, and transplanted it into his own †."

Not satisfied with rendering him odious, the historian endeavours to render him ridiculous, by the relation of his adventure at Dover; where having insolently, "after the Roman fashion," occupied an house without leave from the proprietor, he was in hazard of being thrust out, till he humbled himself, and besought lodging for charity's sake ‡.

A. D. 1177, Vibianus Tomasi, a cardinal priest, under the title

* "Legatus, plus Regis quam gregis vel veritatis, gratiam quærens, annuit Regi, ut pro captis bestiolis clericos implacitaret.—Hæcine est Romanæ protectionis tuta securitas, ut clerici in laicam trahantur curiam, ibidem pro bestiolis aulicorum judicio condemnentur," &c.; *Gervas*, p. 1432. The gingle of *Regis* and *gregis* is in allusion to what the clergy held to be the state of the controversy between Henry II. and that Middlesex saint Thomas à Becket.

† "Quia eradicare venerat et plantare, a dextris et sinistris donantium manus donis exoneravit allatis, quæ in suis cofinis transplantavit;" *Gervas*, p. 1432. This is an awkward allusion to a passage of scripture, and which, even in our days, may seem profane. The chief wit of the monkish writers consists in parodies from the Vulgate: He who reads them without attending to this circumstance will be sometimes at a loss to understand their meaning.

‡ "Cum superbè, more Romano, apud Dovram, non petita licentiâ, sibi hospitium usurparet," &c. *Gervas*, p. 1434.

of *Sancti Stephani in Monte Calio**, entered Scotland in the character of legate from the see of Rome, "trampling every thing under foot." He was, to use the expression of the monkish historian, "prepared to catch, and not unprepared to snatch †." He assembled the Scottish prelates at Edinburgh, and sat in council there.

On this occasion Christianus Bishop of Galloway was suspended from his office for disobeying the summons of the legate. This bishop asserted, that he was subject, in quality of suffragan, to the jurisdiction of the Archbishop of York. It is to be remembered, that in those days the inhabitants of Galloway were a people distinct from the Scots, and governed by their own laws.

A. D. 1180, Alexius, a sub-deacon of the Romish church, held a council in the church of the Holy Cross, near Edinburgh. The principal business of this council was the long-disputed consecration of John Scot Bishop of St Andrew's. He was consecrated ‡; but William the Lion, King of Scotland, had sworn, "by the arm of St James," that John Scot should never enjoy the revenues of the bishoprick, and he most religiously adhered to his oath. On this account Roger Archbishop of York, armed with Papal authority, excommunicated William the Lion, and put Scotland under an interdict. But Pope Lucius III. thought it expedient

* See *Zabarella*, *Aula Heroum*, p. 233. In this island he was called *Wivianus*, from *V*, being pronounced as *W*, which is now the characteristic of a particular county, and known by the name of *the Cockney language*. Innes departing still farther from orthography, calls him *Winian*; *Critical Enquiry*, p. 589.

† "Conculcans et comminuens obvia quæque, expeditus capere, nec inexpeditus rapere;" *Chron de Melros*. ad ann. 1177. Fordun has carefully transplanted into his history this choice flower of monkish rhetoric.

‡ *Chron. de Melros*. *ibid*. Archbishop Spotiswood, and many a transcriber from him, say, that John Scot was consecrated on Trinity Sunday 1178: But in a trifle of this nature I prefer the author of the Chronicle of Melrose, who was a cotemporary trifler.

to annul the sentence*. The unfortunate bishop, depressed by his Sovereign, and at length abandoned by the see of Rome, resigned an office which he was not permitted to enjoy, and contented himself with the meaner bishoprick of Dunkeld.

The officious step taken by the Archbishop of York proved no less fatal to his claim as Metropolitan in Scotland: William the Lion procured a bull of exemption from Pope Clement III. [1188], which other Popes afterwards confirmed†.

A. D. 1201, Johannes de Salerno, a cardinal priest, under the title of *Sancti Stephani in Monte Celio*, held a council at Perth, of four days continuance. There he established many regulations to be held in observance by the Scottish church. In those short sessions he is said to have reformed the manners of the clergy‡.

In this council it was decreed, that all men should cease from their secular occupations on Saturday at noon, and not resume them until Monday morning. Boece assures us, that this decree was ratified by the Scottish parliament||.

Some authors have supposed, that this singular decree was framed in consequence of "a signed mandate from heaven," which Eustace Abbot of Flay produced to Geoffrey Archbishop of

* The preamble of his bull is singular: "Cum regibus tanquam præcellentibus Apostolus statuerit deferendum," &c. *Harduin. Concil.* T. 6. part 2. p. 1875.

† *MS. History of the Bishops of Dunkeld*, by Alexander Milne Abbot of Cambuskenneth, fol. 5.—When the bishoprick of St Andrew's was estimated at the yearly revenue of L. 8018, 3 s. that of Dunkeld was estimated at L. 1206 : 6 : 8; *Chart. Aberbrothock*, vol. 1. fol. 10.—The bull of Clement III. is well known to every one versed in Scottish history. See *Sir James Dalrymple*, p. 325. &c.

‡ "Die Sancti Nicolai;" *Ch. Kelfo*, fol. 155. Adv. library. "Multa constituit observanda;" *Chron. de Melros*. Dempster says, l. 16. "Indicto concilio dierum quatuor, mores ecclesiasticorum reformavit." Dempster might have added, "Grave opus quatuor dierum."

|| *Hist. Scot.* l. 13. fol. 277. b.

York *. This blasphemous and stupid forgery speaks of the efficacy of the intercession made by the holy angels, and "*Sanctissima* " *genetrix mea Maria.*" It enjoins, that no man do any work from the ninth hour on Saturday afternoon, until sun-rising on Monday. Should men transgress herein, stones, wood, and scalding water, were to be rained down from heaven during all the night, and animals of prey were to be let loose among them to devour the breasts of their wives. If this nonsense gave occasion to the decree of the Scottish council, it may seem strange that the decree should prolong Sunday beyond the tenor of that mandate which descended from heaven †.

Of the cardinal legate who presided at this council, the monkish historians speak with much asperity. "Now this same John," says Hoveden, "ate not flesh, neither drank he wine nor strong drink, nor any thing wherewith he might be drunken; howbeit " he thirsted after gold and silver." Such are Hoveden's words literally translated ‡.

The Chronicle of Melrose has preserved a curious anecdote of this *Johannes de Salerno*. A controversy concerning boundaries had long subsisted between the monks of Melrose and Kelso: With the view of terminating it, the legate came to Melrose: *There* he was honourably entertained for near two months; from *both* parties he

* "*Mandatum subscriptum de celo;*" *Binii*, Concil. ad ann. 1201. See also *R. Hoveden*, p. 821. edit. 1601; and *Matth. Paris*, p. 141. edit. 1644; and *Baluz. Capit.* vol. 2. p. 1396. Spottiswood supposes that this council was celebrated in 1189: A strange and inconsistent error! for he himself makes mention of the presents brought to the King of Scotland by the legate, from Innocent [III.], who began to reign in 1198; *History Church of Scotland*, p. 41.

† I do not suppose that the forgers of this, and of many similar mandates, had an eye either to the Roman *Ancile*, or to the ΔΙΟΝΗΤΕΣ ΑΓΑΛΑΝΑ of Ephesus. In every country and every age, deceit and credulity are uniform.

‡ "*Prædictus vero Johannes non manducavit carnem, vinum et ciceram non bibit, nec aliquid quo inebriari potuit; sed aurum et argentum sitivit;*" *R. Hoveden*, *ibid.*

received presents of horses, and even of money; to *both* parties he promised a favourable judgement; and at length he departed, leaving the controversy undecided *. A proof how well this legate was qualified for the office of reformer, and how well the Scottish clergy had been reformed by him.

In justice however to him, I must observe, that he did not neglect this mighty controversy. From the Chartulary of Melrose it appears, that he earnestly intreated, and even enjoined, the King of Scotland to determine it; and that the King complied with his request. This is the more remarkable, because several years before Pope Coelestin III. had in vain charged the King, "for the remission of his sins," to pronounce judgement between the parties †.

A. D. 1206, Innes, *Critical Enquiry*, p. 589. quotes a writing in the possession of the Viscount of Arbutnot, for proving that a provincial council, *synodus generalis*, was held at Perth in April 1206.

A. D. 1211, William Malvoisin, Bishop of St Andrew's, and Walter Bishop of Glasgow, possessed of legatine powers from Inno-

* "Apud Melros honorificè susceptus, per 30 noctes et amplius commoratus est; maxime ut controversiam inter monachos de Kelcon [Kelso] et monachos de Melros pacificaret: qui utrique parti bene pollicitans, nulli satisfaciens, quamplurima dona, scilicet auri et argenti, necnon equorum plurimorum, ab utraque parte auferens, nulli quicquam commoditatis conferens, litem penitus indeterminatam reliquit;" *Chron. Melros* ad ann. 1202.

† The words of William the Lion, at pronouncing his award, are, "Dominus Papa Coelestinus per literas suas mihi significavit, et in remissionem peccatorum mihi injunxit, ut facila diligenti inquisitione de divisis illis, quod justum esset inquirerem, [et] partibus assignarem. Johannes etiam, titulo Sancti Stephani in Caelio Monte, presbyter cardinalis, dum legatione fungeretur in terra mea, me instanter precatus est, et auctoritate sua mihi injunxit;" *Chart. Melros*. fol. 26. This King was termed *the Lion*, not because he was a lion of courage in the field, and a lion of justice in civil life, but because he was of a rough and stern countenance. On the other hand, his brother Malcolm IV. was termed *the Maiden*, because of his effeminate appearance. The common fable is, that Malcolm obtained the appellation of *Maiden*, quod virginitatem intactam servasset; and many foolish and improbable tales are recorded to make good his right to the epithet: But it is now known that *Malcolm the Maiden* was the father of a child; *Ch. Kelso*, fol. 16. b.

cent III. held a council at Perth. In it there assembled a great number of the bishops, prelates, and clergy of Scotland, and of the other estates, "by the King's warrant, as is the custom." The purpose of this council was to induce the people of Scotland *to take upon them the cross*, in the fashionable sense of the phrase. A great multitude consented; but, to use the words of the historian, "not many rich, not many mighty *." To invest any Scottish bishop with legatine powers, was an impolitic and dangerous innovation.

A. D. 1221, Magister Jacobus, Canon of St Victor at Paris, penitentiary of the Apostolic see, and legate in Scotland and Ireland †, assembled all the prelates of Scotland at Perth, and *there* held a provincial council ‡.

At the same time, Egidius de Torres, a Spaniard, a cardinal deacon, under the title of *St Episc. Cosmæ et Damiani*, was sent into Scotland to solicit an aid for a new expedition into the Holy land. He received considerable sums of money from the laity as well as from the ecclesiastics; but having profusely wasted them, he pretended that he had been robbed by the way, and so returned empty handed to Rome ||. Thus the *canon* presided in the council, while the *cardinal* was employed in mendicating assistance for new holy wars.

* "Coacto apud Perth grandi concilio episcoporum, prælatorum, et cleri Scotiæ, ac aliorum, ut moris est, de mandato Domini Regis statum, ostenderunt omnibus voluntatem et mandatum Domini nostri Papæ, de itinere Hierosolymitano prædicando;" Fordun, l. 8. c. 78. It is not quite certain to whom the words "*De mandato Regis*" are applicable. I retain this ambiguity in the translation for reasons which will be obvious to the learned reader.

† The title which he himself assumed was, "Frater Jacobus, Domini Papæ penitentiarius et capellanus, apostolicæ sedis legatus;" *Ch. Morav.* fol. 36.

‡ "Convocatis totius regni prælatis apud Perth, tenuit generale concilium, quatuor diebus continuis, incipiens ab octavis purificationis;" *Chr. de Melros.*

|| Rymer, tom. 1. p. 227.; Zabarella, Aula Heroum, p. 242.; Boece, l. 13. fol. 282. b.

A. D. 1222. Upon a like errand another legate arrived in the following year: but the Scots, either less opulent, or more judicious than their neighbours, would not venture their money on a croisade. A croisade was the South-sea project of those times: as by the one, men hoped to gain riches without industry, so by the other they hoped to gain heaven without repentance, amendment of life, and sanctity of manners. A certain bishop, says Boece, moved in parliament, That neither this legate, "nor any other legate hereafter," should be received into the kingdom; and this motion was approved by the King and the estates.

History, such as it is, has recorded a St Bridget, who hung up her petticoat on a sun-beam to dry, and a St Baldred, who by his prayers obtained the singular privilege of being interred in three different churches, while this sensible resolute bishop remains without a name †!

I am apt to believe, that this narrative of Boece is founded on truth; for it greatly illustrates a bull of Honorius IV. which runs thus: "Honorius Episcopus, servus servorum Dei, venerabilibus fratribus universis Episcopis regni Scotiae salutem et Apostolicam benedictionem. Quidam vestrum nostris nuper auribus intimaverunt, quod cum non habeatis Archi-episcopum, cujus auctoritate possitis provinciale concilium celebrare, contigit in regno quod est a sede Apostolica tam remotum, statuta negligi concilii generalis, [et] enormia multa committi quæ remaneant impunita: cum autem provincialia concilia omitti non debent, in quibus de corrigendis excessibus, et moribus informandis, diligens est habendus cum Dei timore tractatus, ac canonicæ relegendæ sunt regulæ ac servandæ, maxime quæ in eodem concilio generali sunt statutæ;

* "Sed ne in posterum quidem;" Boece, *ibid.*

† *Camerarius* de Scotorum pietate et SS. regni Scotiae, p. 80.; *John Major*, 4. sentent. dist. 10. 9. 4. Major uses the example of St Baldred's triple interment to illustrate the doctrine of transubstantiation. After this, can Buchanan be censured for saying, that he was "solo cognomine major?"

"per Apostolica vobis scripta mandamus, quatenus cum metropoli-
 "taniā noscamini non habere, auctoritate nostrā concilium cele-
 "bretis. Datum Tyber. 14 kal. Jun. Pontificatus nostri anno
 "nono" [1225] *.

If any doubt was entertained as to the favourable reception of a foreign legate in Scotland, nothing could be more judicious, or better timed, than this bull of Honorius. It asserted the rights of the see of Rome, and yet avoided the asserting them in a form which might be disagreeable to the Scottish nation. The bull, however, had one consequence, which, in all probability, the Pope did not foresee. The permission was temporary, and for holding a council; but the Scottish prelates took advantage of its ambiguous style, considered it as of perpetual authority, and, under its sanction, held frequent provincial councils, without the interposition or consent of the Pope.

Before 1232, but in what particular year I know not, a provincial council was held, by a canon of which, every parish-priest was secured in the privilege of pasturing his cattle over the parish †.

In 1237, Henry III. King of England, and Alexander II. King of Scots, met at York. At this meeting was present Otho the Pope's legate in England, a cardinal deacon, under the title of *Sancti Nicolai in carcere Tulliano*. The legate expressed his intention of visiting Scotland, in order to regulate ecclesiastical affairs in that kingdom, as he did in England: Alexander is reported to have addressed him in the following manner: "I do not remember ever to
 "have seen in my dominions a legate from the Pope: neither is
 "his presence necessary with us; for hitherto the condition of our

* *Ch. Morav.* fol. 11. the reader will find this bull prefixed to the code of Scottish canons.

† In *Chart. vet. Morav.* fol. 16. there is a writing intitled, "Conventio super terris
 "de Strathbolgon," &c. 1232. It contains the following clause: "Quilibet vero fa-
 "cerdos ministrans alicui prædictarum ecclesiarum, habebit sibi, et successoribus suis,
 "communem pasturam per totam parochiam suam; secundum quod est provisum et confi-
 "tutum ab Episcopis regni Scotici, et concilio eorundem."

" church is prosperous. The King my father, and my other predecessors, never admitted a legate into Scotland; neither will I, while I retain my authority. You have the reputation of being a holy man, and therefore, should you visit Scotland, I counsel you to beware; for lawless and blood-thirsty savages dwell in my dominions. I myself am not able to keep them in due subjection. You may have heard how they lately made an attempt on my own person, and fought to expell me from my kingdom. Were they to assail you, my authority would not restrain them."

After this discourse the legate became less intent on his projected journey to Scotland, and rather chose to continue in England, attached to his own obsequious King. However, a certain Italian, related to the legate, remained with Alexander: On him Alexander, that he might not appear at utter variance with the Papal see, conferred some marks of distinction. Such is the account of the transactions between Alexander and the legate, as given by Matthew Paris *.

For the honour of the King of Scots, we must presume that this narrative is, in some of its circumstances, erroneous. Alexander could not be ignorant that legates from the Papal see had been often received in Scotland, and had presided at provincial councils: Neither would he have attempted to conceal what was so universally known. I imagine that Alexander refused to receive a legate whose original commission respected England, lest the receiving

* *Matth Paris*, p. 301. edit. Paris 1644. " *Latera regis fui, scilicet Angliæ, sibi per omnia obedientis, non reliquit: remansit autem cum rege Scotiæ quidam Italicus, legatus consanguineus, quem Rex cingulo militari, terram etiam conferendo, ne penitus rebellis videretur, nobilitavit.*" It is observed by *Marca*, *De Concordia*, l. 5. c. 57. § 5. that this legate must be supposed " *aut admissum non fuisse in regno recentibus adhuc odiis adversus legatos, aut non ante admissum quam per literas mandata sua exposuisset.*" The former part of this hypothesis is plainly erroneous; nor can the latter part of it be proved from the passage in Matthew Paris, which *Marca* imperfectly quotes. That famous treatise *De Concordia*, notwithstanding its singular merit, bears too many lineaments of a party-work.

him might be construed into a tacit surrender of the independency of the Scottish church.

Be this as it will, it is plain that Alexander meant to obstruct the entrance of the legate into Scotland, as far as he could with decency; and therefore that he endeavoured to alarm an unwarlike churchman with the terrors of robbery and murder.

A. D. 1239. At length the legate overcame his fears, and prepared to enter Scotland. Alexander again sought to prevent him; he again urged, that this visitation was both unprecedented and unnecessary. It is said, that only by the intercession of the nobles of both kingdoms was he prevailed upon to consent to the admission of the legate; and that even then he insisted for a writing under the legate's hand, declaring that this should not be drawn into precedent *.

All difficulties having been thus removed, the legate came to Edinburgh, and held a provincial council *there* †.

Perhaps he still remembered the lawless and blood-thirsty savages whom the King had so artfully described in the conference at York. It is certain that he passed not beyond the Forth, nor sought any interview with the King, who at that time resided in the more northern parts. "The legate," says Matthew Paris, "sojourned in the principal towns on this side the sea ‡;" and having collected a large sum of money, secretly, and without leave asked, he departed from Scotland.

Such was the magnanimity of Alexander II. that the high-spirited Pontiff, Gregory IX. submitted to soothe him by a detail of spe-

* Matth. Paris, *ibid.*

† "Celebravit idem Otho concilium suum apud Edinburg, in crastino Sancti Lucæ "Evangelistæ;" *Chr. de Melros*. His true name was Eades le Blanc l'Aleran. See *Moreri*.

‡ "Mare non transit; sed in bonis civitatibus commorans cismarinis, vocavit episcopos et nobiles terræ beneficiatos;" *Matth. Paris*, p. 336. By *mare* is meant, according to the language of those times, *Mare Scoticum*, or the Frith of Forth. *Bona civitates* is a Gallicism for *bonnes villes*.

cious affected reasons, tending to shew the propriety of a legation in Scotland. "The church of Scotland," says that Pope, "acknowledges the Romish see as her immediate mother, in things spiritual. To leave her destitute of the consolation of a legate from us, would be an indignity which in conscience we cannot permit. Were we, by our legate, to visit the church of England, and yet neglect the neighbouring church of Scotland, she might complain of our want of *maternal affection* *."

A. D. 1242. Not long after this a provincial council was held at Perth, but no Papal legate appeared. David Bernham, Bishop of St Andrew's, presided: The King himself was present, and enjoined his knights and barons, under severe penalties, to abstain from injuring the clergy, or incroaching upon the customary privileges of the church. This council published certain canons, which were ratified by the King and the Estates, and remained in observance until the abolition of Popery †.

In

* "Nos consultius attendentes, quod cum circa regnum Scotiæ eo majorem curam gerere teneamur, quo fortius ecclesia Scotiana Romanam ecclesiam solam matrem et metropolitanam, nullo medio, recognoscit, indignum existeret, nisi quæ nos singularem patrem in spiritualibus obtinet, specialem a nobis reciperet consolationis affectum; eadem cardinali, in dicto regno Scotiæ, legationis officium, motu proprio, duximus committendum: quia relinquere, *conscientiâ salvâ*, nequivimus, quin eidem Scoticæ ecclesiæ, per dictum legatum, Apostolicæ visitationis solatium mitteremus; ne a nobis *affectione maternâ* spoliari se crederet, si, a nobis ecclesiam visitantibus Anglicanam, regnum Scotiæ sic in vicino positum, expers visitationis Apostolicæ remaneret;" *Gregorii IX. bulla*, apud *Odor. Raynald.* ad ann. 1337. § 40.

† "Habitum deinde est concilium primatum ecclesiæ, præsentis rege, Perthi—Eo concilio edita sunt statuta provincialia, *approbata Rege et regni proceribus*, quæ et *hoc tempore* in ecclesia observata manent;" *Boece Scot. Hist.* l. 13. fol. 284. p. 2. Boece does not determine the precise year in which this council was celebrated; but he says, it was in that same year in which the Earl of Angus died, and the Earl of Athole was murdered, *i. e.* 1242, according to *Chron. de Melros*. Concerning this council, Fordun thus speaks, l. 9. c. 59. "His etiam diebus, omnes episcopi Scotiæ tenuerunt concilium apud Perth; et Rex interfuit cum omnibus comitibus et baronibus totius terræ suæ, vocatus ad instantiam cleri conquerentis de militaribus infestantibus eum de decimis
" et

In 1268, Ottobonus de Fieschi, a cardinal deacon, under the title of *Sancti Adriani*, Papal legate in England, attempted to assemble a council of the Scottish church. He summoned all the Scottish bishops to attend him in England; he also required the Scottish clergy to send two abbots, or two priors, as their representatives. This was an ill-timed attempt to subject the Scottish church to a foreign jurisdiction, and it proved unsuccessful. The Scottish bishops sent two of their number, the other clergy as many, to watch over the proceedings of this council. The legate procured several canons to be made; but the Scottish clergy absolutely disclaimed obedience*. They now began to feel their own strength, and to exert it.

A. D. 1269. Accordingly a provincial council was held at Perth, in presence of the King and the chief persons of the kingdom. Hugh Benham Bishop of Aberdeen presided. The clergy and the people were then at variance, concerning that perpetual subject of controversy, the small tithes. The clergy demanded certain tithes in virtue of the Papal decrees; the people pleaded exemption by the usage of the realm. Boece says, that Bishop Benham was empowered to determine the matters in debate. By this council the former provincial canons were confirmed; o-

" et immunitatibus ecclesiæ. *Intravit autem Dominus Rex concilium episcoporum, et præcepit, ne quis miles, aut baro, aliquam injuriam, molestiam, aut gravamen, contra sacrosanctæ ecclesiæ consuetudinem eis inferret, statutis super hoc pœnis ultmicibus. Sedente rege cum suis baronibus in illo concilio seorsum apud se, conquesti sunt comites de combustione comitis Atholiæ, &c.*"—Keith says that Bishop Bernham presided at this council; *Catalogue of Scottish bishops*, p. 11.: but, contrary to his laudable practice, he has omitted his voucher. It is probable that he followed Spottiswood, *History of the Church of Scotland*, p. 43. The rotation established at that time gives reason for presuming, that Bernham Bishop of St Andrew's presided.

* Afterwards Pope, under the name of Adrian V.—" *Legatus quoque nova quædam statuta, tam de sæcularibus quam religiosis personis, Scotorum præcipue, constituit; quæ penitus clerus Scotiæ observare recusarunt;*" *Fordun*, l. 10. c. 24.

thers,

thers, with universal approbation, were added for the benefit of religion, and every cause of dissension was removed *.

In this council the Abbot of Melrose, and most of his conventual

* " Dissidebat tum fortè populus Scotus cum clero. His summorum Pontificum sanctiones, illis regni consuetudinem, sua pro sententia, afferentibus: Causam dissidii ferunt, quod fructuum quorundam decimas, quos petebant sacerdotes, populus aperte solvere recusasset. Hanc litem dirimendi potestas Hugoni permissa, Perthi facta concione multa,—ubi decretum fuerat *rege presente regnique primatibus*; veteres episcoporum sanctiones, *provincialia statuta* vocant, firmavit; novas quasdam ad Christianæ religionis decus et augmentum omnibus probantibus superaddidit; discordiam sustulit atque extinxit penitus;" *Boece*, vitæ Pontif. Aberdon. fol. 5. Boece, according to custom, has left his readers to divine the date of this council. Hugo de Benham, or Benin, was elected Bishop of Aberdeen in 1267; he remained at Rome for a year after his election; *Keith*, p. 64. Upon his return the council was held at Perth; *Boece*, *ibid.*; and therefore it must have been held about 1269.

On the revival of learning, many writers abandoned precision, which they could attain, for the reputation of elegant composition, which they could not. Of this number was Boece. He has not informed us by whom this power of adjusting differences was conferred on Bishop Benham. The ambiguity of Boece's expression has induced Keith to say, p. 64. that it was in consequence " of a solemn mutual submission:" A most improbable hypothesis! for how could the clergy and laity of Scotland leave all their disputes to the arbitrement of a single bishop, and of one too whose impartiality in the discharge of his new episcopal function could not be known? It would seem, that the controverted matters were left to the decision of the clergy, assembled *under the authority*, and in the presence of an able monarch; and that their decision was confirmed by parliament. Bishop Benham chanced, in rotation, to preside at this council. Hence, according to a vulgar prejudice, he was supposed to be *pacis mediusque belli*, the arbiter and the judge between the contending parties. This idea may have been strengthened by the pompous title of *Conservator statutorum*, with which the Bishop happened to be invested.

Boece has also left it to conjecture, whether Bishop Benham presided in council or not; and whether, by *primates regni* are meant the estates, or the King's ordinary council, or the nobles accidentally attending on the King's person.—Neither do we certainly know whether *episcoporum sanctiones* means the canons established by the whole prelates of the Scottish church, or the particular regulations of bishops in their own dioceses.—It would have been as easy for Boece to have related the decision of the controversy between the ecclesiastics and the laity, as to have said in general, " That all causes of dissension were removed." Every historian cannot be a genius, but every historian may be perspicuous.

E

brethren,

brethren, were solemnly excommunicated. The crimes laid to their charge were, that they had violated the peace of Wedal, assaulted some houses belonging to the bishop of St Andrew's, murdered one clergyman, and wounded many others *.

There can be little doubt that the canons of the councils 1242 and 1269, are those preserved in the chartulary of Aberdeen, and from that chartulary published by Wilkins, *Concilia Britannie*, tom. i. p. 607.—618. I am persuaded that none of the writers on our law ever perused them; yet they well deserve the title of "*the Scottish ecclesiastical Code*." They were lately offered to the public, with some explanatory notes †.

Concerning those canons it may suffice to observe, that the *first* appointed a council to be annually held, and *this* under the authority of the bull of Pope Honorius III. 1225; and that the *second* canon appointed each of the bishops, in rotation, to be *conservator statutorum concilii*. His office was, during the interval between one council and another, to enforce obedience to the canons, under pain of ecclesiastical censures.

These were bold measures, admirably well calculated for securing the independency of the church of Scotland, but fatal to the prerogative of the Papal see.

A. D. 1275. This is a remarkable æra in the Scottish church. An ecclesiastic, whom Fordun calls "*Magister Bagimundus*," came into Scotland, in name of the Pope, to collect the tenth of all ecclesiastical benefices, for relief of the Holy land.

* Fordun, l. 10. c. 25. This remarkable event is passed over in silence by *Chron. de Melros*. All that I can discover there concerning it must be gathered from the following expression. "*Cessit officio abbatizationis sue Dominus Johannes de Edirham, Abbas de Melros*;" p. 241. Had there been extant a Chronicle of Kelso, we should have learned all particulars from it.—*Animis celestibus ira!*

† For the benefit of those who may be inclined to publish any tracts concerning the antiquities of Scotland, I must observe, that *twenty-five* copies of the Canons were sold.

He held a council at Perth. All the clergy, except the Cisterrians, paid the tenth, upon oath, and under the terrors of excommunication. The Cistercian order had granted a general aid of 50,000 marks; so that it would seem the extent of their revenues over Europe remained unknown*.

This Bagimundus, at the request of the Scottish clergy, repaired to Rome, in order to obtain an abatement of the tax†; but in vain.—At that period the diminution of taxes was not so easily obtained from the see of Rome, as a pecuniary commutation for any crime.

Our writers have converted "*Magister Bagimundus*" into a "*Cardinal Bagimont*," who never existed. That he was a cardinal, they generally agree, but they differ as to the time of his coming into Scotland. *Skene*, in his treatise *De verborum significatione*, voc. *Bagimont*, says, "The Pope, in the time of James III. sent in this realm an cardinal and legate, called *Bagimont*, quha did make ane taxation of all the rentalles of the benefices," &c.—*Skene* himself published the act of James III. parl. 6. c. 46. where this taxation is called "the auld taxation of Bagimont." Bishop *Lesley*, by an error still more unpardonable, has brought this imaginary Cardinal Bagimont nearer to his own times, from the reign of Alexander III.

* "*Monachi Cistercienses concesserunt Domino Papæ, pro toto ordine suo finaliter, quinquaginta mille marcas argenti;*" *Fordun*, l. 10. c. 35.

† "*Ut antiquas taxationes omnium bonorum suorum acciperet, septem pro sex computatis;*" *ibid.* *Boece* says, "*Scoti decimam decimæ partis fructuum ecclesiasticorum contulerunt;*" l. 13. fol. 291. p. 1. His words are ambiguous, and might mislead one to imagine, that on this occasion the clergy contributed only the tenth of the tenth part of what they possessed. In the old chartulary of Moray, fol. 68. there occurs, "*Taxationes beneficiorum episcopatus Moravien.*" The churches of each deanry are set down in a separate list, and at the end of each is written, *summa—deinde decima.*—This is a more natural subsidy than that which *Boece* may be supposed to mean: Nevertheless, it is certain that the tithe of tithes, called *secunde decima*, was a thing well known.

to the reign of James IV.* This may serve as a sad specimen of the inattention and endless errors of our historians.

Although the court of Rome would not consent to any deductions, there is some reason for suspecting that this aid was not made effectual; for in 1276, Innocent V. offered to grant the *Papal tithe* to Alexander III. King of Scots, providing he repaired to the Holy land. It is probable that the Pope was willing to yield to the King what he himself was not able to levy †.

A. D. 1280. The Bishop of Moray addressed a letter to "the bishops, abbots, priors, deans, archdeacons, and other prelates of the church, to be assembled in council at Perth." This slight notice is all that I have discovered concerning the council 1280. It serves, however, to shew *who* were the constituent members of a Scottish provincial council at that period ‡.

The fierce contest between Bruce and Balliol, intestine wars, and the heavy rod of a foreign usurper, interrupted for many years the assemblies of the Scottish clergy. As soon as government was restored, they appear in a light which reflects great honour on their characters.

A. D. 1309. On the 24th of February a provincial council was held at Dundee. In it the clergy issued a declaration to all the faithful, bearing, That the Scottish nation seeing the kingdom betrayed, enslaved, and left without a leader, had assumed Robert

* *De Reb. gest. Scotor.* l. 8. p. 356. edit. Rom.

† Among the Scottish records carried away by Edward I. there was "Bulla Innocenti Quinti de concessione *decima Papalis* in regno Scotiæ Domino Regi, si voluerit terram sanctam adire;" *Rymer*, t. 2. p. 216. This must have been in 1276, the only year of the reign of Innocent V.

‡ *Chart. vet. Morav.* fol. 46.

Bruce for their sovereign; and that the clergy had willingly done homage to him in that character*.

A. D. 1321. A provincial council was held at Perth in the month of July. The parliament was then sitting at the same place. I know not whether any public business was transacted at this provincial council. Some proceedings in it, relative to a private cause, deserve to be mentioned, as shewing one part of the duty of a provincial council, not generally known. "Agnes de Morthingtown, *filia et hæres Domini Petri de Morthingtown, militis,*" had covenanted to sell her lands of Gillandristown in le Garviach, [Garioch], "*Johanni filio Adæ Druming,*" for 360 marks Sterling. She appeared in the provincial council, and made oath, That she and her heirs would hold the sale good and valid. The words of the deed to this effect are, "*Juravi, tactis Sacrosanctis Evangeliiis, in præsentia universorum prelatorum in concilio apud Perth, no die mensis Julii, anno Domini millesimo CCC vicefimo primo, congregatorum, me dictam venditionem meam ratam et firmam habere in perpetuum, pro me et hæredibus meis,*" &c.† I mention this the rather, because a conceit has sprung up, that females were excluded from the succession to lands by the ancient law of Scotland, and of consequence that *hæredes* in an ancient grant implies a limitation to *heirs-male*. The examples to the contrary are numberless.

A. D. 1324. A provincial council was held at Scone in the month of March ‡. It is called *concilium generale*. But this expression may denote a parliament as well as provincial council.

* This celebrated manifesto is to be found in the appendix to Anderson's *Independency of Scotland*, n. 12. It contains sentiments worthy of a more enlightened age, and which the Scottish clergy did not, in a more enlightened age, universally embrace.

† *Roll. Rob. I. n. 85.*

‡ *Ch. Glasgou.* I quote here from Innes, not having had an opportunity of perusing the chartulary of Glasgou.

A. D. 1357. The Scottish bishops, with consent of their respective chapters, and of the clergy of Scotland, became bound in payment of 100,000 marks Sterling, for the ransom of that weak and unfortunate prince David II. As this obligation is in the name of the whole clergy, and as they are all bound in it, we may reasonably presume that it was consented to and drawn up in a provincial council. This deed is dated at Edinburgh, 26th September 1357*.

A. D. 1400. A parliament, assembled at Scone on the 21st February, provided, That from a sentence of excommunication pronounced by the bishop of any diocese, an appeal should lie to the *Conservator cleri*, and from the *Conservator cleri* to the provincial council, where the matter was to be finally determined. This regulation was to continue while the schism of the church continued.

"To this ordinance," says the statute, "the clergy consented †." Hence it is probable that a provincial council was sitting at that time.

A. D. 1420. On the 16th day of July 1420, a provincial council was held at Perth. Besides other ecclesiastics, there were present six bishops and five abbots, as also procurators [or deputies] from four bishops and eight abbots. William Stephen, Bishop of Dunblane, was chosen *Conservator statutorum*; and in that character presided at the council ‡.

The

* "De communi consensu et assensu omnium capitulorum nostrorum, et totius cleri regni Scotie;" *Rymer*, t. 6. p. 41. The Scots are accused of having once sold a king at too cheap a rate; on this occasion, it must be acknowledged, that they bought a king from the English at an exorbitant rate.

† Stat. Rob. III. c. 6. "Cui ordinationi consensit clerus, durante schismate, sicut ceteri Regis ligii."

‡ Wilkins, *Concil.* vol. 3. p. 380. mentions, from Fordun, a council held 3d October 1416, and termed by the historian *concilium generale*. But indeed this assembly appears

The clergy of each diocese were required to report, upon oath, what was the practice as to the *confirmation of testaments*. They unanimously reported upon oath, " 1. That bishops and ordinaries had been in the constant practice of *confirming the testaments* of all persons within their respective dioceses, and of naming executors to those who died intestate. 2. That it was the constant practice to sequester the effects of the deceased, until their latter-wills were presented to the ordinary, and regularly confirmed in his court. 3. To require all executors to administer upon oath. 4. As far as in them lay, truly to perform all the reasonable injunctions of the deceased. 5. To be ready, upon demand, to render to the ordinary, and all others concerned, an account of their administration."

They also reported, " That the practice was, first to pay the debts of the deceased, and then to divide his effects into three equal portions, whereof one was given to his widow, and one to his children: That the executors bestowed the remaining third in payment of legacies, and for the soul of the deceased: That of this third, or *dead's part*, the executors were wont to pay, or to compound with the ordinary, at the rate of five per cent. for the expence of confirmation."

All these usages were approved and confirmed by the council: both the clergy and the people were enjoined to observe them *.

From

appears to have been a parliament held for determining the question, Whether Scotland should submit to the council of Constance, or adhere to Benedict XIII. ? It has been already observed, that *concilium generale* may denote a parliament as well as a provincial council.

* The proceedings of the council 1420 are preserved in the chartulary of Moray, fol. 62. 63. Concerning them several observations occur.

" *Administer upon oath.*" It is called, " De fidei juramento [q. inventario] facto, vel faciendo juramentum."

" *Widow*

From this period until the eve of the Reformation, the accounts which we have of provincial councils in Scotland are scanty and jejune.

A. D. 1428. From the strain of the 87th statute of James I. it would appear that a provincial council was held at Perth during the sitting of parliament*.

A. D. 1436. Antoninus Bishop of Urbino, the Pope's legate, was received by the King and clergy, in a provincial council held at Perth, on the 4th day of February 1436 †.

A. D. 1450. Mention is made of the last general council held

"Widow and children." No mention is made of the case of a person leaving neither widow nor children. Formerly that event might be less common, than in times when men being more luxurious, and more attentive to settlements, marriage is not so early, nor so fruitful. It was, however, an event which must have frequently happened; and there it was that the clergy seem to have reaped their harvest.

"For the soul of the deceased." So I translate, *"pro exequiis et anima defuncti;"* although that expression may be thought more comprehensive.

"By the clergy and people." *"A clero et populo debere observari."* It may be doubted how far this solemn act of the church in 1420 can be reconciled with an hypothesis in *Essays on British antiquities*, p. 189.

* *"Et quod istud statuatur de presenti auctoritate concilii provincialis."* Hence Sir George Mackenzie conjectures that this statute was first made in a provincial synod. But from the spirit and style of the statute, it would seem to have been framed by the laity, not by the clergy alone. *"Ad parcendum expensis et vexationibus pauperum in curia spirituali litigantium,"* is not ecclesiastical Latin.

The expression, *"Quod illud statuatur de presenti auctoritate concilii provincialis,"* probably means, that the provincial council then sitting should be required to ratify this statute, as relating to *the form of process* against churchmen.

† *"Eodem anno legatus Domini Papæ Eugenii intravit regnum ante festum Domini, vocatus Antoninus, Episcopus Urbinatensis, et admissus per Regem et clerum in concilio generali apud villam de Perth, inchoato 4. Februarii; sed propter præventam mortem Regis, sequenti principio Quadragesimæ secutam, nihil legationis exercuit;"* Fordun.

at Perth in presence of the three estates *: But it is doubtful whether a provincial council or a parliament be here meant.

A. D. 1457. A provincial council was held at Perth. It was therein declared, That by ancient custom the King presented to all benefices of ecclesiastical patronage, *sede vacante*. The passage is curious, and will be found in the note below †.

A. D. 1459. A provincial council was held at Perth in the month of July. Thomas Spence Bishop of Aberdeen presided. At the King's request, this council granted a declaration of what had passed in the council 1457. It is remarkable that this was done after an inquisition upon oath, although the former declaration was so recent ‡.

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* "Ultimum concilium generale tentum apud Perth, coram tribus regni statibus, in magno numero congregatis;" *Chart. Dunferm.* vol. 2. fol. 39.

Wilkins, *Concilia*, vol. 3. p. 540, mentions a provincial council held at Edinburgh in 1445. But the writing which he produces for proving the existence of this council is nothing more than a warrant by John Bishop of Brechin, "Conservator privilegiorum ecclesiæ Scoticanæ," for transcribing [or making authentic copies] of two Papal bulls: the one by Gregory XI. 1375, concerning the effects left by a bishop at his death; the other by Martin V. 1426, ordering an inquiry into the offences of Finlay Bishop of Argyle. Both bulls are of moment; the first as to the law, the second as to the history of Scotland: but they are foreign to my present subject.

† *Records of parliament*, James III. fol. 75. "In anno Domini 1457, illustrissimus Dominus noster Rex supradictus, erat in possessione, ex veteri et prisca consuetudine, presentandi ad omnia vacantia beneficia, quovismodo vacant. sedibus, ad ecclesiasticum patronum et collationem ordinariam pertinentia, infra regnum Scotiæ, donec ad temporalitatem Episcopi admittantur, et ad electiva secularia, etiam si majora post pontificales, et ad alia generaliter seu specialiter qualitercunque reservata."

‡ *Records of parliament*, *ibid.* In consequence of this declaration, an act of parliament was passed, 19th October 1462; *Wilkins*, tom. 3. p. 582. Hence the reader may judge of the accuracy of *Glendoick*, who "extracted from the public records" the acts of the "first parliament of King James the Third, halden at Edinburgh, the ix day of October, the yeir of God ane thousand, foure hundreth, threescoir sex yeires; and of his reigne the first yeir." *Glendoick* never considered, that James II. was slain 1460;

A. D. 1465. The annual council of the clergy was held at Perth, on the festival of St Kynelin Martyr, "according to laudable and "ancient custom, and with permission of the Papal see*."

A. D. 1487. In the month of April a provincial council was held at St Andrew's. William Archbishop of St Andrew's presided †.

A. D. 1512. A provincial council was held in the monastery of the Dominicans at Edinburgh. Bishop Lesley says, that *Bagimont* the Pope's legate was present, and that in it all benefices exceeding L. 400 of annual value were taxed, for payment to the Pope of the tenth, and the dues of issuing bulls. He says, that it was also provided, that the King might levy from those benefices a certain sum, when necessity required: and that this continued to be called

that a parliament was held in the name of his successor, 1462; and consequently that 1466 could neither be the first year of the reign of James III. nor the year of his first parliament.

* "Concilium cleri, ex antiqua et proba consuetudine, et indulto apostolico, generaliter et annuatim tentum apud Perth, in festo Sancti Kynelini martyris;" *Chart. Aberbrothock*, vol. 2. fol. 70. I know nothing of this Saint Kynelin, nor of the day of his festival. Keith has subjoined to his *Catalogue of Scottish Bishops*, another list of names, under the title of *Kalendar of Scottish Saints*. In that list I find, Macwolok, Macglastian, Molonach, Minnan, Finnan, Modan, Dodan, Marnan, Tarnan, Tigernake, Guinoche, Devenike, and Constantine King of Scotland, monk and martyr; but I find no Kynelin.

† The memory of this council is preserved by a commission from the monastery of Aberbrothock, to eight of their brethren, or any one of them, to appear in that council on behalf of the monastery; *Chart. Aberbrothock*, vol. 1. fol. 115. This commission contains a power, "contra et ex adverso producta, opponend. respondend. accipiend. replicand. duplicand. triplicand. et, si necesse fuerit, quadruplicand." From the reign of Robert I. words began to be multiplied: before the reign of James III. the evil had increased; it is now familiar. How are the chimes rung, in our enlightened age, upon "any horse, mule, ass, cattle, coach, berlin, landau, chariot, chaise, calash, waggon, wain, cart, or other carriage whatsoever:" as if "every quadruped and carriage," would not comprehend all particulars.

Bagimont's

*Bagimont's tax roll**. A strange error! Bishop Lesley supposes, that *Bagimont's taxation* was introduced in the latter end of the reign of James IV. although a statute of James III. parl. 6. c. 46. terms it, with propriety, "*the auld taxation of Bagimont*." The Bishop adds, "Herein the voice of the council was unanimous, but their sentiments diverse." This is probable: in popular assemblies unanimity of voices does not imply unanimity in opinion.

A. D. 1536. A provincial council was appointed by parliament to be held on the 1st of March. The Archbishop of St Andrew's was required by the King to hold the council on that day: If he omitted it, the parliament besought the King to apply to the Pope for a brief, empowering any two of the Scottish bishops to convocate and hold the council. To this the Archbishop of Glasgow consented, "for the commoun wele of this realm;" but protested, that the "privilege and jurisdiction grantit to him and his successors," should not be understood as thereby impaired†.

A. D. 1542. According to Spottiswood, a council was held at St Andrew's, by Cardinal Beaton, for preventing *the English match*. With this view the clergy agreed to contribute their aid, according to their respective abilities. The beneficed clergy were to pay, the mendicant

* "Hoc tempore synodus provincialis episcoporum, abbatum, religiosorumque ecclesiasticorum, Edinburgi, in Coenobio Dominicano præsente Pontificis nuntio, *Baiomano* dicto, celebratur. In qua, *communi omnium voce, etsi repugnantibus multorum voluntatibus*, fuerat fixum, ut omnia sacerdotia, quorum reditus quadragenas libras excederent, Papæ pensionem, decimarum ac diplomatum nomine, numerarent; Regique, pro ejus arbitratu, cum necessitas premeret, pecuniam quantamcunque penderent. Hic census in hunc usque diem *Baiomanus* dicitur;" *Lesl. de Reb. gest. Scot.* l. 8. p. 356. edit. Rom.

† *Rolls of parliament*, 1536. This act shews, that the Archbishop of St Andrew's was, at that period, understood to be perpetual president in provincial councils, so totally had the canon, in the reign of Alexander II. been forgotten. This may be imputed to the title of *Legate*, which the Archbishops of St Andrew's had obtained from the Papal see.
The

mendicant friars to preach*. Such resolution may have been taken at a private consult of ecclesiastics, but it is highly improbable that it was taken in a provincial council.

A. D. 1545. In January a convention of prelates was held at Edinburgh†. Some ineffectual motion was *there* made for correcting the abuses of the church, and for reforming the manners of the clergy; but so many difficulties occurred‡, that the clergy desisted.

The protestation by the Archbishop of Glasgow, though obscurely expressed, may probably allude to his rank of Archbishop, and to its consequence, the right of holding a council within his own province.

The history which passes under the name of Knox, relates, with much exultation, a ridiculous incident of a dispute between the cross-bearers of the two Archbishops; b. i. p. 51. *last edition*.

It may be presumed, that when the *state* thus interposed, the *church*, in neither province, was very solicitous about holding any council at all.

* *History Church of Scotland*, p. 73. I suspect that Spottiswood was misled by the ambiguous expression of Buchanan, l. 15. c. 6. "Coacto sacerdotum conventu, et mag-nâ ab eis extortâ pecuniâ." Here it is necessary for the reader to observe, as on other occasions, that until 1600 the Scottish year commenced at Lady-day.

† Buchanan, l. 15. c. 32. calls it "Conventus ecclesiastici ordinis;" Knox, b. i. p. 55. calls it "A convention of prelates."

‡ "Nec ullus inveniretur exitus;" *Buchanan*, *ibid*. Keith, from his aversion at the Reformers, is willing to think more favourably of the Roman-Catholic clergy of that age than they thought of themselves. He has thus paraphrased Buchanan: "The cardinal perceiving, notwithstanding the *severities* he had used, many persons, in divers places, did incline to the new doctrines, and that they were *much fortified* in their opinions, and *discouraged from entertaining a due regard to the church*, by the immoral lives of a great many of the clergy, had called a provincial council to meet at Edinburgh, on the 13th of January 1545-6, in the *Black-friars*, in order to consult upon proper methods to *discourage the springing heresy*, and to restrain the licentiousness of clergymen, which gave so great scandal, and a *handle to the people* to desert them. But *how far they proceeded in that affair*, remains uncertain, [this seems an odd translation of "nec ullus inveniretur exitus"]; or if they were not *altogether diverted from any inquiry*, by the information they then received, that Mr George Wisheart, *the famous preacher of heresy*, for whom the cardinal had long searched, was just then

" at

ed from that work, and resolved upon the trial of George Wisheart for heresy.

A. D. 1549. A provincial council was held, first at Linlithgow, and then adjourned to Edinburgh. James Hamilton Archbishop of St Andrew's presided. There were present, one Archbishop, six bishops, two vicars-general, ten abbots and priors, three commendatars, twenty-seven friars of different orders, besides professors, doctors, and licentiates in theology*.

This council sat long, and was not dissolved till the 27th of November 1549. Its canons are remarkable on many accounts, and in particular for their preamble. It begins with the charge of St

" at the house of Cockburn of Ormiston, in East Lothian;" *History Church and State of Scotland*, b. i. p. 41. It is extraordinary, that the opportunity of seizing, and consequently of burning, George Wisheart, should be represented as an apology for the clergy's not proceeding in that work of reformation, which they, and even Keith, admit to have been necessary; it is still more extraordinary that this apology should be extracted from Buchanan. I am satisfied that Keith had no other authority. Keith was as incapable of deceiving as he was of judging. I can make no better excuse for this useful labourer in the history of Scotland. When I say more for Calderwood and Wodrow, let me be termed partial and prejudiced.

* *Wilkins*, Concil. vol. 4. p. 46—60. Among the commendatars is to be found, " Jacobus Prioratus Ecclesiæ Primatialis S. Andreæ commendatarius;" better known by the name of *Regent Moray*.

The following memorandum is singular. " *M. Johannes Mayr*, decanus facultatis " theologicæ universitatis Sancti Andreæ, et Martinus Balfour, *Doctores in theologia*, " annosi, grandævi, et debiles, comparuerunt per procuratores." Of this John Major, the historian, Knox speaks, about 1528, p. 14.: " His word was then holden as an oracle, " in matters of religion." John Major was just such an oracle as *Apollo Pythius*, infallible by courtesy.—" Au pais d'aveugles, les borgnes sont rois."

Of the council 1549, " F. Richardus Marshall, Anglus divinarum literarum professor," was a member. " He asserted in a sermon, that the *Pater noster* ought not " to be addressed to the saints."

" F. Andreas Cottis," [Cotes, called by our historians *Tottis*], " guardianus ordinis " minorum de observantia," was also a member. He asserted, in a counter sermon, " that the *Pater noster* might be addressed to the saints;" *Spottiswood*, p. 92.

Paul, Acts xx. 28. It then sets forth, as the two prime causes of heresy, 1. The corruption and profane lewdness of the clergy of *almost* every degree; 2. Their gross ignorance in all arts and sciences*.

For correcting those abuses, no fewer than *fifty-seven* canons were enacted. In general they are well calculated for establishing decency and good order, and for introducing some species of learning into the ecclesiastical state. Had they been enacted some years sooner, and executed with rigorous impartiality, they would have served to check the progress of the Reformation: but they came too late†.

The

* “Cumque duæ *potissimum* malorum causæ et radices appareant, quæ tantas nobis “turbas hæresiumque occasiones excitavere; nimirum in personis ecclesiasticis, omnium “*fere* graduum, morum corruptela, ac vitæ profana obscenitas, tum bonarum literarum, artiumque omnium, crassa ignorantia,” &c. We need not resort to the testimony of adversaries; Knox himself could not have said any thing more severe. Indeed the first book of his history is little more than a rude and uncourtly commentary on the two causes of heresy mentioned in the ecclesiastical canons 1549; the flagitious lives and the gross ignorance of the Scottish clergy.

† When a house is in flames, it is vain to draw up regulations for the bridling of joists or the sweeping of chimnies. The profligacy of the clergy was the most obvious cause of that spirit which forced on the Reformation. The celibacy of ecclesiastics was originally introduced by some superstitious refinements on the law of God and nature. Could men have been kept alive without eating and drinking, as well as without marriage, the same refinements would have prohibited ecclesiastics from eating and drinking, and thereby elevated them so much nearer to the state of angels.—In process of time this fanatical interdiction became an instrument of worldly wisdom; and thus, as frequently happens, what weak men began, politicians completed. The Scottish clergy, in obedience to their superiors, submitted to the law of celibacy. The consequences are well known. “*Suis ut ipsa Roma viribus ruit!*” Hence the flagitious lives of the Scottish clergy were censured by Sir David Lindsay, by the authors of “Gude and godly ballats,” and by other writers of that class, with the utmost freedom, and even acrimony of expression. Men once become odious, may soon be rendered contemptible. Whenever the established clergy become contemptible in the eyes of the people, their existence depends upon the *state*. The clergy in 1549 were sensible of this; and
in

The canons of this council shew that the clergy, however confident of the orthodoxy of their opinions, could not pretend to palliate the enormities of their lives. It is remarkable, that with a professed zeal for the reformation of manners, they mingled an inveterate hatred at heretics, and a most implicit faith in the church. Hence the canons 1549 inforce the punishment of heretics no less than five several times; and declare, that concerning pluralities, the rules of the council of Trent, made, or *hereafter to be made*, shall be held in observance*.

The account of those canons, as given in Knox's history, is exceedingly partial and erroneous†.

A. D.

in order to stop the torrent of satire, they passed a canon of the tenor following: " Ut unusquisque ordinarius intra suam diocesim perquirat, qui apud se detinent aliquos *libros rythmorum, seu cantilenarum vulgarium, scandalosa ecclesiasticorum, et hominum, vel constitutionum, vituperia et probra, seu famosos libellos, aut quamcunque hæresim in se continentia*; et ubi comperti fuerint, prohibeantur sub *pœnis aëtorum parlamenti*, atque confiscentur, et comburantur, interdicaturque universaliter eorum usus, mercatura, impressio, et lectura, sub similibus pœnis;" c. 48. A feeble barrier indeed!

I do not recollect that any one has hitherto observed the wide stretch which this canon makes. The act of parliament here alluded to must be that of James V. 12th June 1535, first published by Keith. *History*, p. 12. What the statute provided against the heretical opinions of Luther and his disciples, the Scottish clergy extended to all satirical ballads, containing opprobrious reflections upon themselves.

* " Quantum ad pluralitatem beneficiorum conventio seu concilium, refert se ordinatis, seu ordinandis, in concilio Tridentino, nondum dissoluto;" c. 39.

† This is a strong charge; and I will make it good. Whether the passage here censured be the work of an interpolator, or of Knox himself, is nothing to me. I seek truth where I can find it: if I am successful in my search, I am happy; if not, unfortunate. I am willing to admit that Knox was zealous in a good cause; but no zeal can justify a man for misrepresenting an adversary. My freedom may offend; but if we are to be governed by names and authorities of man, why did we leave the church of Rome, where there are as good names and authorities of man?

The

A. D. 1551. Another provincial council was held at Edinburgh, by James Hamilton Archbishop of St Andrew's. It confirmed the canons

The words in Knox's history, p. 110. are, " Among their acts there was much ado for caps, shaven crowns, tippets, long gowns, and such other trifles."

This I admit; and it shews that the author knew the contents of the canons, and did not take them from the worst of all information, popular report.

I cannot blame the historian for considering those matters as *trifles*; for at first I viewed them in the same light. But it will appear upon examination, that the canons concerning the garb of ecclesiastics were necessary and proper. The 5th canon will serve to explain the reason for all those regulations. "*Hæc eadem conventio, variis adducta argumētis et rationibus circa barbarum usum propositis, universos et singulos hujus provinciæ clericalis fortis, et ecclesiasticos per locorum ordinarios, attentè hortari decrevit, ut sui statûs et conditionis rationem habentes, et frequentes obtreclationes contra barbatos compescantur, atque clerici a laicis distincti appareant, eorum barbas tendendas curent.*" To the same purpose it is provided by the 7th canon: "*Hortandi sunt prelati et ecclesiastici omnes, ut dehinc graviore solito portent habitus, qui potius lanei sint decentis coloris quam serici, gravitatem præ se ferentes.*"

One would be apt to imagine that the clergy meant, by this 7th canon, to remove the cause of Sir David Lindsey's satire, p. 219.

" Cleikand to them scarlot and cramosie,

" With menever martrick gryce and rich armyne."

" That none should enjoy office, or benefice ecclesiastical, except a priest."

As to this there can be no objection, nor indeed is it mentioned by way of censure.

" That no church man should nourish his own children in his own company; but that every one should hold the children of others."

This would have been a subterfuge for idiots alone. In a provincial council held under pretext of reformation of manners, a canon of such a nature could never have been proposed nor enacted. The only authority that I can find for the existence of such a canon, is an unfair and strained inference from c. 2. which runs thus.

" *Proles concubinarias in suis consortiis clerici non teneant. Item hortatur hæc synodus, ne qui prælati, aut alii ecclesiastici inferiores, proles suas, ex concubinato susceptas, in suis consortiis teneant, nec in suis ecclesiis directe aut indirecte promoveri patiantur; neque eas baronibus, quovis quæsito colore, in conjugium de Christi patrimonio jungant, seu barones efficiant.*"

The inference thence drawn is, that as no churchman was allowed " to nourish his own children in his own company," therefore it was provided, " That every one should

canons of the council 1549, and added some new ones*. Of them the canons 8th, 10th, 11th, 12th, 14th, and 16th, are the most remarkable.

"should hold the children of others:" A most extraordinary *argumentum a contrario*, which in itself is a suspicious mode of reasoning. Any one acquainted with the history of those times, will perceive, that this statute pointed at peculiar personal enormities, and that Archbishop Hamilton thereby struck at the fame of his predecessor Cardinal Beton.

"That if any were found in open adulterie, for the first fault he should lose the third of his benefice; for the second time the half; and for the third the whole benefice."

This also is a canon which could not have been enacted; nor was it. The council, by c. 1. ratified the act of the council of Basle, sess. 20. c. 1. which provides just the contrary, and expressly says, "Ut quicumque clericus, cujuscunque statûs, conditionis, religionis, dignitatis etiam pontificalis, vel alterius præeminentie, existat, qui post hujus constitutionis noticiam, quam habere præsumatur per duos menses post publicationem ejusdem, (quam ipsi diocesani omnino facere teneantur, postquam eadem constitutio ad eorum noticiam pervenerit), publicus fuerit concubinaris, a perceptione fructuum omnium beneficiorum suorum, trium mensium spatio, sit ipso facto suspensus, quos suos superior in fabricam, vel alium evidentem ecclesiarum utilitatem, ex quibus hi fructus percipiuntur, convertat: nec non et hujusmodi publicum concubinarium, ut primum esse talem innotuerit, mox suos superior teneatur monere, ut intra brevissimum terminum, concubinam dimittat; quam si non dimiserit, vel dimissam, aut aliam, publicè resumpserit, jubet hæc sancta synodus, ut ipsum omnibus suis beneficiis omnino privet; et nihilominus hi publici concubinarij, usquequo cum eis per suos superiores, post ipsarum concubinarum dimissionem, manifestamque vitæ emendationem, fuerit dispensatum, ad susceptionem quarumcunque dignitatum beneficiorum vel officiorum sint inhabiles; qui si post dispensationem, recidivo vomitu, ad hujusmodi concubinatum publicum redierint, sine spe alienius dispensationis, ad prædicta prorsus inhabiles existant," &c. Whether this canon has the most remote resemblance to the canon mentioned in Knox's history, the candid reader will judge; and consequently what authority there can be for asserting, that "the Bishop of Moray, and other prelates, appealed, saying, they would obey at the Canon law."

* *Wilkins, Concilia*, vol. 4. p. 69. This council was appointed to be held 14th August 1550; *Wilkins*, ib. p. 60. Keith says, that it was held in January 1550-51.; *History*, p. 63.

From the 8th canon it appears, that in the most populous parishes, few of the parishioners attended mass on Sundays, much less on other festivals; that of those who attended, some scoffed and behaved irreverently, while others busied themselves in merchandise, even at the church-perch. *This* was the period when men had laid aside all reverence for the old form of worship, and yet had not heartily embraced the new; a singular state, and, from the nature of things, of short endurance.

The 10th, 11th, and 12th canons, strictly enforce the discipline of excommunication; although from the 8th canon it appears, that the people in general had deserted the most solemn offices of the Roman-Catholic religion. The council therefore must have relied on the civil sanctions attending excommunication. Thus was the state called in aid; a dangerous associate to the church in such circumstances.

To the 14th canon the present age unknowingly owes the establishment of the registers of proclamation of banns, of marriages and baptisms. The solicitude of the council for rendering such registers perfect, is highly laudable. The reasons assigned for this solicitude are sensible; a circumstance which I rather mention, because it has become the mode to despise every thing that we ourselves *did not* enact, as much as it is to neglect the execution of what we *did*.

The 16th canon is peculiarly remarkable; it relates to the publication of that famous *Catechism* concerning which all our historians seem to have been misinformed*.

According

* Of it Keith thus speaks, *History*, p. 63. note (d). " This catechism, as it is indeed
 " called on the title-page, consists of 205 leaves in a small quarto. It is printed at St
 " Andrew's, the 29th of August 1552, by the command, and at the expence, of Arch-
 " bishop Hamilton; whose composition it is commonly reckoned to be. The preface
 " bears his name, and is directed principally to all the clergy, who are appointed to
 " read

According to Archbishop Spottiswood, the question, "Whether the *Pater noster* might be addressed to the saints," was agitated in

"read it in place of sermon, if there be none at the time. It is a judicious commentary upon the *Commands, Belief, Lord's prayer, Magnificat, Ave Maria*; and the author shews both his wisdom and moderation, in handsomely eviting to enter upon the controverted points. In a word, no divine at this day need be ashamed of such a work. Therefore, since it was commonly sold for two-pence, and called in derision the *two-penny faith*, as Archbishop Spottiswood, and other of our historians inform us, I readily assent to Dr Mackenzie, who thinks, that Archbishop Hamilton having been at the charges of the printing, allowed the pedlars to take only two pennies Scots for each copy of it, from the people, as a fee for their pains in distributing it." This note needs a commentary: it is erroneous in almost every particular.

"By the command and at the expence of Archbishop Hamilton;" not by the command of Archbishop Hamilton; for the provincial council 1551 authorised the publishing of this catechism a year and a half before it was actually published. The council authorised it as a book already written, examined, and approved. The care of the edition was committed to the Archbishop; hence Keith supposes that it was published at his expence.

"Whose composition it is commonly reckoned to be." A dutiful conjecture! that the Primate was the person best qualified for drawing up a treatise of theology, or collecting together the scattered embers of the old opinions. The canon of the council seems to put a negative upon this conjecture. "*Statuit et ordinat, librum quendam Scotico idiomate conscriptum, ac prudentissimorum hujus regni prælatorum, doctissimorumque theologorum, et aliorum ecclesiasticorum virorum præsentis conventioni interessentium, judiciis et calculis, exactissimâ discussione habitâ, approbatum,*" &c.

"Appointed to read in place of sermon, if there be none at the time." Keith took this from Spottiswood; but the canon provides, that it be read, "*Omnibus Dominicis et festivis diebus.*"

"The author shews both his wisdom and moderation, in handsomely eviting to enter upon the controverted points." *Handsomely eviting* must mean *artfully eluding*. But in truth the praise here bestowed could not be just: the catechism treats of the *seven sacraments*, which is a circumstance omitted by Keith; and surely *that* subject could not be treated, without entering upon the controverted points.

A few passages transcribed from this catechism will shew how little it answers the description given of it by Keith. "In this sacrament of the altar, efter the wordis of consecration, thair is na substance of breid and wyne, but allanerly the substance of the body and blud of our Saviour, under the forme of breid and wyne: And thairfor we suld nocht geve credit to our sycht, to our smelling, to our taisting, and twiching, bot

"allanerly

in this council; and "after much reasoning," was carried in the affirmative by a plurality of voices. "But," adds the historian, "the bishops, and such as had any judgement, would not suffer a conclusion to be enacted, ordaining the sub-prior, at his return to St Andrew's, [where this wonderful controversy had arisen],

"allanerly we suld tak tent quhat we heir; for as Sanct Paule sais, *Fides ex auditu est, auditus autem per verbum Dei*;" fol. 142.

—"O Christin man and woman, beleif fermely, that in the sacrament of the altare thou reffavis four thingis, to thee maist precious and profitabil; the body of Christ, his saule, his blud, and his Godhead. Sa it followis, that thou reffavis na les in ane lytil uste [host] than the preist raffavis in ane gret uste: also it followis, that thou reffavis bayth the body and blud of Christ in ane forme of breid, als weil as the preist reffavis thame, and ilk ane of thame, in twa formes of breid and wyne; and also dout nocht bot that thou reffavis the hail content of the sacrament als weil as the preist dois, and thairwith thou suld hald thee content, conforme to the auld and lang use of the universal kirk of God, and decretis of syndry general counsals, quhilk hes ordanit the same to be done, nocht without necessary cause;" fol. 148.

—"Whairto will thou, O Christin man, be sa curious as to speir gif the sanctis in heaven kennis our prayars or na? Put away that vaine curiositie, and beleif as the haly catholic kirk of God beleiffis, quhilk, as S. Paule sais, is the house of God, the fundament and pillar of veritie;" fol. 197.

Such is the handsome manner in which the catechism *evites* the controverted points.

As to Dr Mackenzie's conjecture, approved by Keith, that "this was called the *two-penny faith*, because Archbishop Hamilton allowed the pedlars to take two pennies for their pains in hawking it abroad;" the short answer is, That the canon anxiously provides, that the tract should not be published among the people at all; and indeed uses as many precautions to prevent it from coming into the hands of the laity, as if it had been a book replete with the most pestilent heresy. The words of the canon are, "Caveant vero ipsi rectores, vicarii, et curati, ne sua exemplaria secularibus quibuscunque indiscretè communicent, nisi ex iudicio, consilio, et discretione sui ordinarii; quibus ordinariis licebit nonnullis probis, gravibus, bonæ fidei, ac discretis viris laicis, ejusdem catechismi exemplaria communicari, et iis potissimum, qui videbuntur potius suæ instructionis causâ, quam curiositatis cujuscunque, eadem expetere." The same canon provides, That all the copies not required for the use of the clergy be kept in safe custody, [firmâ custodiâ], by the Archbishop himself.

From all this it may be concluded, that the thing called in derision the *two-penny faith*, must have been totally distinct from Archbishop Hamilton's catechism.

"for settling the minds of the people, to shew that the *Pater noster* ought to be said to God; yet so that the saints ought also to be invoked *."

A. D. 1552. A provincial council was held at Linlithgow. It anathematized heresy, and declared the decrees of the council of Trent to be divinely inspired. "This council made many canons for repressing of heresy, for strengthening the authority of the Catholic faith, and for a thorough reformation of the manners of the clergy †": So says Bishop Lesley.

A. D. 1558. In July, a provincial council, held at Edinburgh, permitted certain heretics convicted, to redeem their lives, by making a public recantation, on the 1st of September, the festival of St Giles, tutelary saint of Edinburgh. Bishop Lesley represents this as extraordinary lenity. It proved however superfluous: for, at the act of faith, the populace tumultuously rose, broke to pieces the statue of St Giles, dissipated the procession of the clergy, and rescued the criminals ‡.

The provincial council re-assembled in November, cited Paul

* Spottiswood, p. 92.

† Lesley, De reb. gest. Scot. p. 516. Spottiswood says, "Some acts also were made for reforming the corrupt lives of the clergy, but little or no execution followed. But Bishop Lesley," adds Keith, "speaks in another strain concerning the matter." This is a mistake: Lesley speaks of theoretical rules, not of the execution of those rules. His words are, "Hæresim justissimâ anathematis notâ consignat, omniaque quæ patrum auctoritate in concilio Tridentino, sub Pauli III. auspiciis, sancita erant, iusta, rata, ac *tanquam Dei imperio fixa*, plenâ comitiis declarant; multaque alia decreta, quæ ad hæreseos vires elidendas, Catholicæ fidei auctoritatem firmandam, ac cleri mores perpurgandos plurimum faciebant, constantissimè sciscunt."

‡ "Plurimis, qui hæreseos notam subiverant, damnatis, *hanc solum pœnam irrogarunt*, ut ad Cal. Sept. proximas, qui dies Divo Egidio urbis patrono sacer erat, publice in foro palinodiam canerent." Lesley, p. 53; Knox, p. 95; Keith, p. 68.

Methven to appear before them, upon a charge of heresy. On his failure, they banished him, and denounced severe punishments against all who should harbour him in their houses *.

A. D. 1558-9. Whatever may have been the blemishes in the character of Archbishop Hamilton, he cannot be charged with remissness in the assembling provincial councils. Another provincial council was held at Edinburgh on the 2d March 1558, and continued until April 1559.

There the Protestants [or *Congregation*] presented what they called the *Preliminary articles of reformation*.

" I. That public prayers be conceived, and the sacraments administered, in the vulgar tongue.

" II. That in time coming, bishops be admitted with the assent of the barons of the diocese, and parish-priests with the assent of the parishioners.

" III. That they who are unfit for the pastoral charge be removed from their benefices, and such others placed in their room as are able and willing to instruct the people by constant preaching.

" IV. That in time coming, immoral and ignorant persons be excluded from the administration of the sacraments, and the other ecclesiastical functions."

To the *first* article the council made answer, " That to conceive public prayers, or administer the sacraments, in any language but Latin, was contrary to the traditions and practice of the Catholic church for many ages past; and that the demand could not be

* The fate of this Paul Methven was singular. Originally a baker at Dundee, he commenced reformer and preacher; he became minister at Jedburgh, was convicted of adultery, deposed, and excommunicated. He expressed deep sorrow for his offence, and declared himself willing to undergo any punishment, " suppose it war the losse of some member of his body;" *Keith*, p. 522. A most humiliating penance was enjoined him: He underwent great part of it, and then made his escape into England.

granted,

granted, without impiety towards God, and disobedience of the church.

To the *second*, That the rules of the Canon law must continue in observance. Besides, the nomination of bishops was in the crown, and it would be presumptuous to incroach upon the right of the crown during the Queen's minority.

As to the *third* and *fourth* articles, The council declared itself willing to execute the decree of the council of Trent, which provides, That all churchmen shall, within six months, discharge their duties in person, or be deprived of their benefices*.

This council promulgated *thirty-three* canons. By the *first* of those canons, the Archbishops of St Andrew's and Glasgow agreed, that their own lives and manners should be tried by a committee of bishops therein named; and *this* with the purpose of setting a good example to the clergy: A necessary measure; for as there happened to be two Archbishops, the one pretending to an equali-

* *Lefley*, p. 546. In the answer to the *second* article, mention is made of the approbation of the Pope, required in the election of bishops; but no conclusion seems to be drawn from that circumstance. It is probable that the clergy mentioned it out of decency, but that they drew no inference from it, because it was a grievance which they, of all men, most sensibly felt.

The form of the mandate issued by the Archbishop of St Andrew's, for assembling this council, is preserved in *Wilkins*, Concilia, vol. 4. p. 204. It is directed to the Archbishop of Glasgow; and bears, " citari — episcopos vestros suffraganeos, ac abbates, priores, commendatarios, decanos, præpositos, et alios viros ecclesiasticos, et circumspectos vestros subditos, et ex famosioribus, consultioribus, et prudentioribus, de capitulis et clero vestrarum ecclesiarum, civitatis, dioceseos, et provincie Glasguensis, etiam religiosos, cujusvis fuerit ordinis, et, ut præmittitur, qualitercunque exemptos, prout Paternitati vestre et Reverendissime visum fuerit expedire." In consequence of this mandate, addressed, *mutatis mutandis*, to each bishop, the bishop issued his mandate to the rural deans, and they communicated it to the clergy. It is to be observed, that the mandate of the Archbishop leaves a latitude to the bishop in each diocese, as to the persons to be summoned; so that under the form of a general summons, a selection might be made.

ty, the other to a superiority *, without such a committee, they would have been answerable to the Pope alone.

Most of the canons of this council contain nothing more than a repetition of what had been formerly enacted †. Some of them, however, are new, and are well calculated to remove the grievances under which the laity groaned ‡.

What followed is well known. The council separated to meet no more.

Thus have I collected all the materials within my power, concerning the provincial councils held in Scotland, during a period of more than four hundred years ||. — May modern councils profit

* " ——— Nec Cæsar ferre priorem

" Pompeiufve parem potuit.

This was the case of the Archbishops of St Andrew's and Glasgow.

† With a view of preserving uniformity in doctrine, the 16th canon lays down the great doctrines to be believed and taught, being eight in number. 1. Tradition; 2. Invocation of saints; 3. The right use of images; 4. Purgatory; 5. Transubstantiation; 6. Communion in one kind by the laity; 7. Profit of the sacrifice of the mass; 8. Regular ordination for the ministering of the sacraments. Had Keith ever seen the canons of this council, he would have acknowledged that *they* did not avoid entering upon the controverted points; and if he had reason to praise their *wisdom and moderation* in 1551, he must have found another name for their conduct in 1559.

‡ Thus, the 21st canon diminishes the exactions of mortuaries; and the 23d canon allows leases of tithes for ten years to be granted in favour of the possessors of the soil; and the 32d canon abolishes oblations at Easter. The 33d canon is curious; it respects lay baptism. After a preamble, " Quoniam Paulus Methwen, &c. novum, inusitatum, et nusquam ab ecclesia catholica hætenus receptum, baptizandi modum induxerunt," it revives the famous form, " Si tu es baptizatus, ego non te baptizo," &c. And here, perhaps, Keith would not have extolled their *wisdom and moderation*.

|| From the time of the Reformation, it is supposed that every ordinance of the church is known, and every historical fact, concerning the church, ascertained; and yet how few are there who ever perused *the Book of the universal kirk*, in which many ordinances and historical facts, not to be found elsewhere, are recorded.

profit by the good examples and by the errors of every remote age.

I subjoin a specimen of curious particulars in it, all relating to one subject.

March 1574. " It is thought meit and concludit, that na clerk-playes, comedies or tragedies, be maid of the canonical scriptures, new as auld, on Sabboth-day nor wark-day, in time coming : The contraveners hereof, if they be ministers, to be secludit fra the function ; and if they be utheris, to be punished be the discipline of the kirk. And ordaines an article to be given into sick as sits upon the policie, that for uther playes, comedies, tragedies, and utheris profaine playes, as are not maid upon authentic pairtes of the scriptures, may be considered before they be proponit publicklie ; and that they be not played upon the Sabboth dayes ;" p. 145.

1576. " The assembly refuses to give liberty to the Bailie of Dunfermline, to play upon the Sondag afternoon a certain play, whilk is not made upon the canonical parts of scripture, in respect of the act past in the contrair ;" p. 161.

1577. Proposal to the Regent, " That his Grace would discharge the plays of Robin-huid, King of May, and sick utheris, on the Sabboth day ;" p. 168.

1579. Quer. from the synodallis. " Quhat ought to be done to sik perfones, that after admonition, will pass to May-playes ; and specially elders and deacones, and utheris quha beares offices within the kirk ? Ans. They aucht not to be admittit to the sacraments without satisfaction ; in special, elders and deacons." We are too apt to figure to ourselves the reformers of that age as persons of impolitic and inflexible austerity.

F I N I S.

*Addition to Note * p. 2.*

It is scarcely necessary to inform the *learned* reader, that, in the Latin of the lower ages, *credulitas* always signifies *opinion* or *belief*, never *credulity* in the modern sense of the word. See *Du Cange*, *Glof. voc. Credulitas*.

AN
EXAMINATION
OF
SOME OF THE ARGUMENTS
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HIGH ANTIQUITY
OF
REGIAM MAJESTATEM;
AND
AN INQUIRY

Into the AUTHENTICITY of
LEGES MALCOLMI.

By Sir DAVID DALRYMPLE.

— *Clamant periisse pudorem*
Cuncti pene patres.

EDINBURGH:
Printed by A. MURRAY and J. COCHRAN.
Sold by J. BALFOUR, and other Booksellers.
MDCCLXIX.

2. 10

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EXAMINATION

OF

Some of the Arguments for the High Antiquity of
Regiam Majestatem;

AND

An INQUIRY into the Authenticity
of *Leges Malcolmi*.

INTRODUCTION.

IT is a certain and undisputed proposition, that the treatise called *Regiam Majestatem*, and the treatise which passes under the name of Ranulphus de Glanvilla, are not both original works; indeed every reader must at once perceive, that the one has been drawn up in imitation of the other.

Which is the original, and *which* the imitation, has afforded subject for much inquiry. Of late the controversy has been revived, and many arguments have been produced for invalidating the authority of *Regiam Majestatem*, and for proving it to be an imitation of Glanville's work.

I do not incline to enter into the merits of this celebrated controversy; my present purpose is, to examine some of the arguments which are urged for the High Antiquity of *Regiam Majestatem*. If, upon examination, they appear conclusive, the authority of that

work will be confirmed; if they appear inconclusive, the learned patrons of *Regiam Majestatem* will, no doubt, support their hypothesis by other and more unexceptionable arguments.

In the controversy concerning the age, authenticity, and authority of *Regiam Majestatem*, all parties have appealed to Skene's edition of that work. Many MSS. of *Regiam Majestatem* still exist, but they have never been critically examined: this labour, in itself irksome, was supposed to be unnecessary.—All parties concurred in relying on Skene as a candid and accurate publisher.

I would not willingly derogate from the labours of others, but truth obliges me to observe, that, to all appearance, Skene was a careless, if not an unfaithful publisher.

From what MSS. it was that Skene published his edition of *Regiam Majestatem* no one can with certainty determine*. Of the tenor and contents of those MSS. we can only judge by the MSS. which are still extant; and if we judge by this rule, we must conclude that Skene was a careless, if not an unfaithful publisher.

Antiquaries agree, that the oldest MSS. of *Regiam Majestatem*, &c. now known, is that which the first Earl of Cromerty bestowed on the Advocates library at Edinburgh. The Noble donor, in a note prefixed to it, says, that "it belonged to the priory of Beaulieu long before the Reformation." It may have been found at Beaulieu, but it undoubtedly belonged to the monastery of the Carthusians near Perth: for on the first page there is written, "Liber domus vallis

* Skene himself, in his dedication of *Regiam Majestatem* gives a strange account of those MSS. Cum in priscas et antiquas leges paulò diligentius inquirerem, incidi in *Augeæ* stabulum, quod ne *Herculis* quidem labore purgari aut evacuari potest. Libri enim complures mihi obijciuntur, antiquæ quidem fidei, sed sinearum et blattarum epulæ. In his multa, quæ antiquitatem nobis ignotam, et judiciorum formulas olim usitatas, nunc ab usu remotas, sapiunt; verba peregrina, prisca, obsoleta, et antiquata, quæ facilius admirari quam interpretari licet.—In his quoque libris, scriptorum imperitiâ et negligentia, multa corrupta, divulgata, multa sparsim et confusè digesta, quæ sensum corrumpunt, aut nullum reddunt." In the cleansing of this Augean stable there is probably no small portion of the figure *hyperbole*, which might furnish an additional chapter to Menckenius's treatise *De charlataneria eruditorum*.

"Virtutis

"*Virtutis ordinis Cartusienfis in Scotia.*" The only monastery of Carthusians was *that* in the neighbourhood of Perth, founded by James I. in the year 1429. I suspect that Lord Cromerty has confounded *vallis Caulium* with *vallis Virtutis*, and hence attributed to the Benedictines what belonged to the Carthusians.

Sir James Dalrymple is of opinion, that this MS. was written in the days of Robert I.; *1st*, Because there are no laws transcribed into it later than those of the 13th of Robert I.; *2dly*, Because the writing appears to be of that age.

The *first* argument is obviously inconclusive, for that the book is incomplete, and has blank leaves in many places. For example, the laws of Alexander II. are imperfect, and break off in the middle of a period, in this manner: "Statuit Dominus Rex Alexander, eodem die et anno, Quod si quis calumniaverit aliquem de furto, vel roboria, et defendens voluerit se ponere super proportionem vicini——" Here the page ends, and then four blank pages follow.

Of *Leges Burgorum* there are in this MS. one hundred and sixteen chapters, and no more: after them eight blank pages follow*.

As to the *second* argument, from the apparent age of the writing, I am unwilling to set my sentiments in opposition to those of so able an antiquarian as Sir James Dalrymple; yet I confess that I cannot perceive the similarity between the writing of the MS. and any writing that I have seen of the age of Robert I. The MS. is patent to public inspection, and every man will judge for himself concerning its age.

There are some passages in the MS. itself which serve to increase my doubts, none to remove them. Thus the *Leges Burgorum* are said to have been "*factæ et affirmatæ per Dominum David bonæ memoriæ, olim Regem Scotiæ, primum hujus nominis.*" This may seem to imply, that the writer knew of a *second* king of that name; and of consequence, that the MS. must be of a later age than that of Robert I.

* There are 143 chapters of *Leges Burgorum* in Skene's edition.

It may be said, that if the writer lived in the reign of Robert I. he might presume that David Bruce would survive his father, and therefore that there would be a *David II.* King of Scotland, so that he might term the ancient David, *primum hujus nominis.*

But even this courtly supposition will not remove the difficulty; for it must be observed, that in the MS. repeated mention is made of *Robertus Primus.* Thus, c. 29. *De officio sergeandi*, it is said, "Statuit *Robertus Primus*;" and in the title, "Processus super deforcatione *recenti*," it is said, "In subsidium pauperum statuit *Robertus Primus.*" Had the writer lived in the days of Robert I. he never could have presumed that the line of Bruce was, by its failure, to make way for Robert Stewart.

But whether this MS. be of the age of Robert I. or of a later age, it seems more ancient than any of those which I have had opportunity of examining.

Lord Auchinleck has a MS. of *Regiam Majestatem*; he conjectures it to have been written about 1460, and his knowledge in ancient writings is indisputable.

Mr Andrew Crosbie advocate has a MS. of *Regiam Majestatem*, which belonged formerly to the family of Balmerino. It cannot have been written long before 1488. Among other miscellaneous matters, it contains the form of different crown-grants, &c. All of them are blank in the names, except one to David Earl of Crawford. The person meant is David 4th Earl of Crawford, the *last* of the many favourites of James III. Unless the forms of the grants were transcribed from some more ancient collection, it may be conjectured that the MS. was wrote about 1488, when David Earl of Crawford was at the height of his power. A few months after, on the accession of James IV. he forfeited, and became no more than any other A or B in a *style-book*.—From the writing I should suppose this MS. to be of the age of James V.

Besides Lord Cromerty's MS. there are four in the Advocates library. For the information of the curious I place their dates here.

1. Date at the end of LL. Burgorum, 17. Dec. 1439.

2. Script. per Jacobum Monynet, 29. Junii 1488.

3. Script.

3. Script. per Johannem Bannatyne, 12. Maii 1520.
 4. Script. per Magistrum G. Cuik, 28. Julii 1528.

Bishop Nicolson mentions a copy of *Regiam Majestatem* in the Yelverton library, [belonging to the Earl of Suffex, at Easton Maudit in Northamptonshire], *Scottish Historical Library*, p. 99.; but it is still more modern, bearing date, "per A. M. 5. Junii. 1570."

Thus much having been premised as to the age of the MS. of *Regiam Majestatem*, I proceed to show my reasons for doubting of the care and fidelity of Skene in his edition of that work.

He thus publishes that celebrated passage, *Regiam Majestatem*, l. 2. c. 33. "Cum quis autem moritur habens filium postnatum, et ex primogenito filio, jam mortuo, nepotem, magna juris solet esse dubitatio, uter eorum præferendus sit in illa successione, scilicet utrum filius vel nepos.—Dicunt quidam, filium postnatum rectiorem esse hæredem, quam nepotem talem; eâ scilicet ratione, quia filius primogenitus, cum mortem patris non expectavit, nec etiam expectavit quod ejus esset hæres; et ideo, cum filius postnatus supervixerit tam patrem quam hæredem, rectè, ut dicunt, patri succedit. Aliis vero visum est contrarium; videlicet, talem nepotem de jure patruo esse præferendum."

Thus Skene, and to the word *aliis* he adds this marginal note, "ut *Glanv.* l. 7. c. 3."

When this passage, as published by Skene, is compared with the MSS. a most extraordinary variation will be discovered.

Lord Cromerty's MS. has these words, "Aliis vero visum est contrarium."—There follows, "ut *Ricardo de Lucy* *, et *R. de Glanvilla*, talem nepotem de jure patruo esse præferendum."

The MS. 1488, part 2. c. 31. bears, "Dicunt quidam, viz. Rainulphus de Glanvilla," &c.

In like manner the MS. 1528, part 2. c. 67. bears, "Dicunt quidam, viz. Rainulphus de Glainvilla."

* R. de Luci, Chief Justice of England from 1162 to 1179; Dugdale. *Chronica series*, p. 2. 3. subjoined to *Origines Juridicales*. He was the predecessor of Glanville.

The MSS. 1439 and 1520, mention in the margin, "Rainulphus de Glanvilla." This is in the same hand with the rest of the writing.

Lord Auchinleck's MS. l. 2. c. 39. bears, "Dicunt quidam, viz. Raynulpus, quod filius postnatus rector est hæres," &c.

Mr Crofbie's MS. l. 2. c. 32. bears, "Dicunt quidam, viz. Ranulpus de Glenwilla *."

I have had no opportunity of consulting the Yelverton MS.; it is however so recent, that no inference could be drawn from it, either one way or other.

Thus all the seven MSS. of *Regiam Majestatem* that are preserved in Scotland, uniformly bear reference to Glanville, although the eldest MS. alone does truly express his opinion.

It is strange if the fatal name of "*Ranulpus de Glanvilla*" did not appear in any one of the MSS. from which Skene formed his edition; if it *did*, it is no less strange that Skene suppressed it.—His marginal note seems to shew that he knew too well what might be implied by *alius*. I presume that "*R. de Glanvilla*" was not one of the various readings which in his preface he considers as "*lucæ ac memoriæ indigna*."

If the words "*R. de Glanvilla*" be not an interpolation, the controversy, Whether *Regiam Majestatem*, or the work of Glanville, is the original, will be brought to a short issue? for a treatise composed in the reign of David I. could not make any reference to Glanville's treatise.

A solution of this difficulty will, no doubt, be attempted by an averment, that the passage is an interpolation of some impertinent transcriber more versed in *Regiam Potestatem* than in chronology.

It must, however, be acknowledged, that this interpolation is not only ancient, but also exceedingly important; and that Skene, if he knew of the interpolation, would have acted more judiciously, in

* I observe, in passing, that Mr Crofbie's MS. l. 2. c. 54. refers to "liber de assis" "Regis David; rubr. 33." There is a like reference in some other of the MSS.

publishing it with a suitable caveat, than in suppressing it altogether.

Here I must observe, in passing, that they who have recourse to the convenient hypothesis of interpolations, ought to declare, once for all, what part of *Regiam Majestatem* they hold to be genuine, what corrupted. Until they do this, they have a manifest advantage in the controversy. Whenever any passage is produced which may seem inconsistent with the high antiquity of *Regiam Majestatem*, they have this ready solution always in their power, "The text is interpolated."

Further, they who solve difficulties by the hypothesis of interpolations, would do well to consider, that "if they take, they must give;" and then their antagonists will urge, why may not the single word *David* in *Regiam Majestatem*, l. 1. c. 1. pr. be an interpolation also, and put in place of *Alexander*, by some clerical transcriber, zealous for the fame of a saint, the son of a saint? If this were admitted, weak would the foundation be on which this mighty structure is raised, "that *Regiam Majestatem* is an authentic body of laws, compiled by the command of David, first of that name, King of Scots."

I return to the comparison between Lord Cromerty's MS. and Skene's edition. Concerning the law of deathbed the MS. has the following words, *part 2. c. 18.* "Licet autem generaliter cuilibet liceat de terra sua, cum voluerit, pro voluntate sua, donare, in extremis agenti hoc nulli hactenus est permiffum, ut *ex. de test. relatum. Glos.*;" that is, "according to the gloss on the Decretals of Gregory IX. l. 3. tit. 26. c. 12."

Skene omits the words, "ut *ex. de test. relatum. Glos.*;" but in a note he expressly refers to this very text of the Decretals of Gregory IX.

Again, the MS. has the following words, *part 2. c. 56.* "Cum quis enim per legem terræ fuerit utlagatus, et postea beneficio principis paci restitutus, non poterit eâ ratione hæreditatem, si quam habuit, ille, vel hæredes sui, versus dominum suum, nisi ex ipsius misericordia et beneficio, recipere; ut *ext. de rescriptis; libro sexto Decretalium, cap. Quamvis*;" [that is, according to the

Decretals of Boniface VIII. 1. 1. tit. 3. c. 8.]; "forisfactum enim et
"utlagium solet Dominus Rex damnatis remittere; nec tamen con-
"venit alia jura infringere."

Here too Skene omits the reference to the Canon law, and here too he inserts it in his notes.

To give one example more; in *part* 3. c. 7. De accommodato *in fin.* the MS. has the following words: "Item, Quæro utrum posset rem
"suam, ita alii accommodatam, infra tempus vel locum, revocare?
"Respondetur, Quod non; ut *ext.* De accommodat. *capite unico*, et
"Dig. eod. tit. 1. in accommodat. § *Sicut.* præsertim cum ejus usus
"interim indigeatur."

This passage is thus published by Skene, 1. 3. c. 9. § 7. "Respon-
"detur, Quod non; quia commodatum non revocatur, *nisi post*
"*usum expletum cujus gratiâ res fuerat commodata.*" He again omits
the references, but inserts them in a note, viz. Decr. Greg. IX. 1. 3.
tit. 15. c. un. et 1. 17. § 3. Dig. commodati. It is remarkable
that the words, "nisi post usum expletum cujus gratiâ res fuerat
"commodata," which Skene has taken into the text, are the precise
words used in the Decretals of Gregory IX.

The coincidence between the texts quoted in the MS. and those re-
ferred to by Skene, is so striking, that one is led to conclude, that
Skene had before his eyes a MS. in which those very texts appeared.

It may be asked, Why then did he suppress them? I answer, be-
cause they made against his hypothesis of the high antiquity of
Regiam Majestatem. A treatise which quoted the Decretals of Gre-
gory IX. and of Boniface VIII. could not have been composed by
order of David I.: for the Decretals of Gregory IX. were not publish-
ed till 1230, *Doujat.* Prænot. Canon. 1. 4. c. 17. § 1. and the De-
cretals of Boniface VIII. were not published till 1298, *sext. Decr.* 1. 5.
in fin.

It was judged proper to make these observations on Skene's edi-
tion of *Regiam Majestatem*, that it may not on every occasion be ap-
pealed to as correct, and unexceptionably authentic.

Thus much having been premised, I proceed to examine some of
the arguments which are commonly urged for the high antiquity
of *Regiam Majestatem*.

SECTION I.

DAVID I. a Lawgiver.

“**D**AVID I. was a lawgiver; and hence a presumption arises, that *Regiam Majestatem*, which passes under his name, was compiled by his authority.”

This argument has been used by some of our writers, and I have often heard it repeated in conversation; but when the evidence that David I. was a lawgiver is fully stated, the evidence that *Regiam Majestatem* was compiled by his authority, may perhaps be impaired, instead of being strengthened.

My purpose is, to bring the whole of this evidence under the reader's view: None of the partisans of the high antiquity of *Regiam Majestatem* have done so much for their own favourite argument. I intend, *first*, to show the general proofs that David I. was a lawgiver; *secondly*, to point out some particular statutes which appear to have been enacted in his reign; and, *thirdly*, from those facts to draw some inferences.

First, As to “the general proof, that David I. was a lawgiver;” this appears, 1. from that famous ordinance of Edward I. mentioned by Prynne, *Pope's usurpations*, p. 1055. “Que le Lieutenant le Roy, de l'heur qu'il serra venuz en la terre d'Escofe, face assembler les bones gentz de la terre, en aucun certain lieu lequel il verra que a'ce soit convenable; et que illoeques, en la presence de lui, et des gentz qu'il y ferreront assemblez, soient reherce les leis que le Roi David fist, et ausint les amendementz et les additions que nut esté puis faitz par les Rois,” *Abercrombie*, vol. 1. p. 398. quotes this passage as irrefragable evidence, not only that laws were enacted by David I. but that *Regiam Majestatem* was composed by his authority. 2. Edward I. delivered to Baliol many writings which had been taken out of the Scottish archives, and

and particularly "unus rotulus de statutis Regis Malcolmi et Regis
"David;" *Anderfon's Independency of Scotland*, p. 147. *. 3. That

* Here I must for once be permitted to plead the cause of a tyrant. Edward I. of England is accused of having destroyed all our ancient writings. I may perhaps be considered as a public enemy for asking two questions which no antiquary ever asked. What benefit could Edward derive from destroying a few insignificant parchments? and, *Where* is the evidence of this universal destruction? With his arms he over-run our country: he did more; he opposed faction to faction, made a collision of the aristocracy, and well nigh subdued the genius of the Scots. A conqueror like Edward I. had no occasion to destroy harmless charters, or monastic chronicles, if possible, still more harmless.

It is said, "That had our chronicles and our public writings been preserved, we should have had more evidence of our independency; but that Edward sought to render Scotland a fee of his own kingdom, and therefore industriously destroyed every writing unfavourable to his system;" as if, at that period, Edward had any measures to observe, or sought for any arguments, but those of the most convenient opportunity, and the longest sword! Our antiquaries seem to forget, that the proofs of the independency of Scotland which they have heaped together, were chiefly gathered from the records of the cathedral of Durham, where they were certainly in the power of Edward.

Again, if Edward I. destroyed all our chronicles, how came the chronicle of Melros to escape? or from what materials did Fordun compose his history? How did so many chartularies escape this general conflagration? Besides, what had a charter of the *Comitatus* of Athole, or Lennox, or Sutherland, to do with the feudatory dependency or sovereign independency of Scotland?

During the misrule which war occasions, there will always be a destruction of books, writings, and title-deeds. We have seen this happen in our own age; and yet no person of candour imputes it to the leaders of armies, whether more or less disciplined. That in the course of Edward's war, writings concerning Scotland were destroyed, I do not dispute: there is evidence of the fact; and the same evidence shews that the destruction was not universal. What I allude to is a charter in the chartulary of Scone, p. 26. where Robert I. anno regni. 18. thus speaks: "*Quia veraciter intelleximus, quod Anglici hostiliter, sigilla quarundam cartarum dilectorum nostrorum virorum religiosorum abbatis et conventus de Scona nequiter avulserunt, et quasdam totaliter secum abstulerunt,*" &c. The monks themselves, when they sought a renewal of all former grants, did not venture to tell Robert Bruce, that Edward I. had carried off their writings; they only said, that the English had taken some of them away, and had torn the seals from others.

Besides, if Edward I. had destroyed, how could he restore those public writings, for the loss of which we pathetically mourn, after an interval of near 500 years? That Edward did restore them to his creature Baliol, is certain; and were there any hope of finding readers, I would publish a catalogue of them with explanatory notes.

David

David I. was a lawgiver, will further appear from the panegyric on that prince, drawn up by his cotemporary Baldred, and inserted in Fordun, l. 5. c. 48. [vol. 1. p. 301. last edition]. This panegyric is one of the most curious pieces in that interpolated work called *Fordun's history* *. It is exceedingly minute; it records various circumstances of the private as well as public life of David I.; every thing concerning him is therein set forth,—“*veluti votivâ picta tabellâ.*” Although it does not contain the most faint or distant allusion to his *great body of laws*, yet it mentions his *statuta Burgorum*.

Secondly, As to “the particular statutes enacted in the reign of “David I.”

1. In the MS. of *Regiam Majestatem* presented to the Advocates library by the first Earl of Cromerty, there is a collection of laws under the name of David I. I have an ancient transcript of the same laws; and I doubt not but there are many other copies still existing.

Lord Cromerty's collection contains *forty-three* chapters; most of them are to be found in the different collections which pass under the name of the *old laws of Scotland*. The MS. in my possession is not so ample. In it, chapters 1st, 8th, and 22d, are wanting. I subjoin a catalogue of the chapters in Lord Cromerty's MS. and of the corresponding passages, as they are to be found, though with many and material variations, in Skene's edition.

* The principal interpolations consist of moral reflections, transcribed from various authors, and in particular from the Fathers: it is a pity that all this common-place extraneous matter should have been published in the late splendid edition of Fordun; it serves only to increase the size of the book, without adding to its usefulness.

Cap.	Cap.
1. Reg. Maj. l. 4. c. 16. § 3.	23. Quon. Attach. c. 78.
2. Reg. Maj. l. 4. c. 18.	24. Stat. Alex. II. c. 15.
3. Quon. Attach. c. 61.	25. Quon. Attach. c. 79.
4. Stat. Wilhelm. c. 14. § 1.	26. Stat. Alex. II. c. 16.
5. Quon. Attach. c. 63.	27. Stat. Wilhelm. c. 2.
6. Reg. Maj. l. 4. c. 10.	28. Stat. Wilhelm. c. 7.
7. Quon. Attach. c. 64. 65.	29. Stat. Wilhelm. c. 25.
8. Reg. Maj. l. 4. c. 9.	30. Stat. Wilhelm. c. 15.
9. 2 Stat. Rob. I. c. 10.	31. Reg. Maj. l. 4. c. 11.
10. Quon. Attach. c. 66.	32. Stat. Wilhelm. c. 6.
11. Quon. Attach. c. 67.	33. Reg. Maj. l. 4. c. 15.
12. Quon. Attach. c. 68.	34. Reg. Maj. l. 4. c. 12.
13. Quon. Attach. c. 69.	35. Reg. Maj. l. 1. c. 16. § 1.
14. ————— *	36. Stat. Alex. II. c. 4.
15. Quon. Attach. c. 70.	37. Stat. Alex. II. c. 7.
16. Quon. Attach. c. 71.	38. Stat. Alex. II. c. 5.
17. Reg. Maj. l. 4. c. 17.	39. Stat. Alex. II. c. 8.
18. Quon. Attach. c. 72. 73. 74.	40. Stat. David II. c. 28.
19. Stat. Alex. II. c. 19.	41. Stat. David II. c. 16.
20. Quon. Attach. c. 75.	42. Stat. David II. c. 17.
21. Quon. Attach. c. 76.	43. Stat. Alex. II. c. 6.
22. Quon. Attach. c. 77.	

It is remarkable, that among those laws there occur *eight* passages from *Regiam Majestatem*, viz. l. i. c. 16. § 1. and l. 4. c. 9. 10. 12. 15. 16. 17. 18. ; and that not one of all those *eight* passages is to be found in Glanville.

Let

* I do not remember this 14th chapter in any part of Skene's edition of the old laws, and therefore I subjoin it here:

“ De appellato ex malefacto.

“ Si quis appellat aliquem de latrocinio, vel roboria, vel aliquo maleficio, unde duellum possit oriri, dicens in sua appellatione, quod reus ei pudorem fecit ad valenciam
 “ xx marcarum, cum damno quod recepit; reus, cum venerit ad duellum, vadia non
 “ ponat pro pretio pudoris appellantis, sed tantummodo vadia ponat secundum assisam
 “ regni, ad valenciam damni quod dicit appellans se recepisse. Et sciendum est, quod
 “ in appellatione roboris, vel incendii, non debet reus vadia ponere, nisi tantummodo
 “ quantum quis dicat se damnificatum fuisse. Item, in appellatione latrocinii, damnum
 “ appellantis

Let me not be understood to affirm, that all those *forty-three statutes* were indeed enacted by David I. ; there are presumptions, and even historical evidence, that some of them were not : nevertheless they appear in the most ancient MS. under his name ; and had Skene published them in that form, they would have been, at this day, "*the auld laws*," as much as any in his collection. Were my readers to be asked, What are "*the auld laws of Scotland*?" most of them would answer, Those certainly which Skene published ; for, as Anderson says, p. 135. 136. " he was a person of great learning, " was well versed in antiquity, and was by his merit, *the best title to " a public office **, advanced to be Clerk-Register, whereby he had the " use and custody of the records." Were my readers to be asked, Why did not Skene publish those laws of David I. ? most of them would answer, Because he knew nothing of them, or because he thought them not genuine. The former supposition is not probable ; the latter is not satisfactory ; for Skene published the *Secunda statuta Roberti I.* not knowing, or not believing them to be genuine. His words are, " Hæc statuta in veteribus libris reperiuntur, locis quidem alienissimis, et incerto auctore: verum, quia ex illis nonnulla ascribuntur Roberto Primo, reliqua, quæ erant anonyma, huc transtuli," *Not. ad. c. i.*

2. That certain laws were promulgated during the reign of David I. will also appear from a precept by William the Lion, preserved in the chartulary of Moray. In it a statute is ingrossed under this title, "*Affisa Regis David avi mei*." For the use of those who are curious in genuine antiquities, and who prefer a fact to an hypothesis, this statute is inserted in a note †.

3. By

" appellantis debet triplicari, ita quod corpus defendentis stabit pro tertia parte ; et pecunia defendentis debet duplicari, quam pecuniam appellans debet secum deferre ; si reus fuerit occisus, corpus ejus remaneat in platea, pro tertia parte pecuniæ."

* Quis novus hic nostris accedit sedibus hospes !

† "*Præceptum Willelmi Regis de decimis solvendis. Si quis decimas vel reditus ecclesiasticas detinere præsumpserit, præcipio, ut compellentur decimam vel*
" *restitutionem*

3. By act 74. parl. 10. James III. 1477, it is provided, That
 "ilk heck of the cruives be three inch wide, as the auld statute re-
 "quires maide be King David." And by act 15. parl. 2. James IV.
 1489, it is provided, "That the Setterdaies-slop be observed and
 "keepe, as the act and statute maide be King David requires."

It would be lost labour to seek for this statute in *the great body of laws* supposed to have been compiled by the authority of David I.; nevertheless, if the judgement of the legislature is to be respected, there *did* exist, in 1477 and 1489, a statute concerning the form of cruives and the Saturday's slop in salmon-fishings; which statute was, at that time, supposed to have been enacted by King David. Any one who attends to the progress of the law as to salmon-fishings, will perceive, that this *auld statute* must have been more ancient than the reign of David II. Some have supposed, that the regulations alluded to in the statutes of James III. and James IV. are not existing. For this supposition there seems no other reason, except-

"rectitudinem illam, simul cum forisfacto, reddere; secundum quod *assysa* fuerit Regis David avi mei, et sicut mos fuit in ejus tempore, et adhuc est consuetudo in episcopatu Sancti Andreæ; scilicet, Si villanus fuerit qui decimam suam, sive rectitudinem aliam ecclesiasticam, dare noluerit, thaynus sub quo rusticus illo sit, vel dominus ejus, si dominum habuerit, distringet illum, decimam illam, sive aliam rectitudinem ecclesiasticam, ecclesie reddere, et suum ab eo forisfactum accipiat; scil. unam vaccam, et unam ovem: si vero thaynus sub quo rusticus ille fuerit, vel dominus ejus, si dominum habeat, illum ad hoc non distrinxerit, vel si propriam decimam, vel aliam rectitudinem ecclesie detinuerit, vicecomes in cujus baliva hoc fuerit, compellat detentorem, decimam, vel aliam rectitudinem suam, ecclesie persolvere. Et contemptorem assysæ Regis David et mei mandati, sive thaynus sive dominus rustici fuerit, mihi forisfactum suum reddere, scil. viii. vacas: si autem vicecomes hujus mandati negligens executor fuerit, vel propriam decimam, vel rectitudinem ecclesiasticam, detinere præsumperit, justitia mea detentorem, quicumque fuerit, ecclesie decimam suam, vel aliam rectitudinem ecclesiasticam, reddere; et transgressorem assysæ Regis David, et præcepti mei, quicumque fuerit, sive vicecomes, sive thaynus, sive dominus rustici, mihi forisfactum reddere, scilicet octo vacas." To this precept Matthew Bishop of Aberdeen, and John Bishop of Caithness, are witnesses. Matthew was Bishop of Aberdeen from 1172 till about 1200; John was Bishop of Caithness from 1185 till about 1213, and consequently this precept must have been issued between 1185 and 1200.

ing this, that the regulations are not to be found in *Regiam Majestatem*. They do, however, exist under the title of *Statuta Alexandri II.* c. 16. in Skene's edition; and they did exist in MS. before the reign of James IV. or James III. What Skene has published as *Statuta Alexandri II.* c. 16. appears in Lord Cromerty's MS. under the title of *Affise et statuta Regis David Primi*, tit. *Affise de aquis*, c. 26.

Here then is an additional proof, that David I. was a lawgiver, and that a particular statute was, in ancient times, supposed to have been enacted by him.

4. By the 68th statute James I. 1426, it is "ordained and delivered, that the elne fall contene threttie-seven inche, as is contained in the statute of King David the First, made thereupon." Agreeably to this, there is mention made in a grant of Malcolm IV. of "viginti celdrarum frumenti et farinae de illa mensura quæ fuit tempore Regis David avi mei;" *Ch. Kelfo*, fol. 144. This statute de mensuris is not to be found in *Regiam Majestatem*. Skene has published "Affisa Regis David de ponderibus et mensuris;" but it is erroneous: For example, it is *there* said, "Uncia debet ponderare triginta denarios de Sterlingis electis." A fuller and more correct copy may be found in MS.

To all this let me add, 5. that there are several statutes in *Regiam Majestatem* which begin thus, "Statuit Rex David," and which are not to be found in Glanville: of this number are l. 1. c. 8. § 32. et c. 18. § 1. I do not see why even the partisans of *Regiam Potestatem* should dispute the authenticity of those statutes. I do not assert it positively, but it appears to me, that the substance of no passage beginning in *Regiam Majestatem*, with the words, "Statuit Rex David," is to be found in Glanville.

Having thus pointed out the general proofs that David I. was a lawgiver, and also the particular statutes which appear to have been enacted in his reign, I proceed, *thirdly*, "to draw some inferences from those facts."

1. As in the oldest MS. existing there occur "Affisæ et statuta David Primi," separate from *Regiam Majestatem*, we cannot infer that

the laws of David mentioned in the days of Edward, and the collection now called *Regiam Majestatem*, are the same.

2. The passages of Skene's *Regiam Majestatem* to be found in *Affisa et statuta Regis David Primi*, are not to be found in Glanville; hence a strong presumption arises, that Glanville did not copy from the author of that collection, nor the author of that collection from Glanville.

3. The only statutes in *Regiam Majestatem* which are referred to in any Scottish statutes, are not to be found in Glanville.

4. The statute preserved in the chartulary of Moray, is certainly, and those referred to in act 68. parl. 4. James I.; act 74. parl. 10. James III.; and act 15. parl. 2. James IV. are probably of David I.; and yet none of them are to be found in the *Corpus Juris* which passes under the name of David I.

5. The legislature, in 1477 and 1489, quoted a statute of David I. which, nevertheless, in Skene's edition, appears under the name of Alexander II.; and consequently the critical knowledge of the Scottish legislature in the 15th century, or of Skene in the 16th, must have been defective.

6. Baldred, the only national cotemporary of David I. whose works are existing, says nothing of *Regiam Majestatem*, and indeed does not make the most faint or distant allusion to that mighty work.

As far as I can recollect, Fordun, Major, and even Boece, are all silent as to this remarkable event, the establishment of the Scottish jurisprudence by David I. The earliest author, if I mistake not, who mentions it, is Johannes Ferrerius Pedemontanus, schoolmaster at Kinlos in Moray. And this leads me to another argument in support of the high antiquity of *Regiam Majestatem*, drawn from the ancient chronicle of Kinlos.

SECTION

SECTION II.

Argument from the Chronicle of Kinlos.

“THE opinion of Skene, that *Regiam Majestatem* was composed in the reign of our King David I. is very probable: for this King was a liberal benefactor and founder of religious houses, and a great encourager of the clergy, who were then the most learned and best versed in the law. It is also very agreeable to think, that a prince so singularly religious and just, as both our own and the English historians reckon him, and who was at so much pains and expence to promote what he thought was the interest of the church, and who frequently in person judged the causes of the poor, and of widows and orphans, would also be very concerned to have the laws for the administration of justice orderly digested for the good of his subjects. This thought is supported and confirmed by the chronicle of the Abbey of Kinlos, [penes Dm R. Sibbald, now in the Advocates library], founded by this King David, where it is said, that this King employed several of his nobles to make a collection of the laws of their own country, and also of the most laudable customs and laws which in their travels they had observed abroad. This being done, he called a general council from all the corners of the kingdom, to digest these laws for the rule of judgement in time coming; and by the general consent, there was from these collections picked out that system of our municipal law, commonly called “REGIAM MAJESTATEM;” Anderson. *Independency of Scotland*, p. 136.—138.

With the first part of Anderson's argument, I have no concern at present: it resolves into this: David I. was a pious and just king, therefore it is probable that he composed *Regiam Majestatem*.

The argument from the Chronicle of Kinlos might be of weight, were

were there such a chronicle of any reasonable antiquity, or composed by a person versed in the history of Scotland.

The only treatise extant under the title of *Chronicle of Kinlos*, was composed by *Johannes Ferrerius*. This man, by birth a Piemontese, came into Scotland in 1528. Robert Reid abbot of Kinlos was his patron. Learning had urged on the Reformation in different countries of the continent. It had begun, in Scotland, to make the same ravages upon the ancient faith. The abbot of Kinlos saw the progress of this contagion, and was eager to stop its course. With this view he resolved to put his convent to school, to lead the brethren by degrees to the knowledge of the sciences, and thence to combat the Reformation with her own weapons. During an embassy in France, he discovered Ferrerius, and he hired him to teach the Latin language in the monastery of Kinlos.

Ferrerius undertook this office; which, I presume, was just better than starving in France. Being master of many Latin words and phrases, he would not waste his leisure-hours in indolence, and therefore, 1537, he gratefully attempted to give an account of *the lives of the abbots of the monastery of Kinlos*, with an eye, no doubt, to his living patron, as well as to dead worthies.

In later times George Crawford commenced an *history of the officers of state in Scotland*. "If he brings down his history to modern times, (said a wicked wit), he may as well write *that of an oyster on the black rocks of Leith*."

So scanty were the materials of Ferrerius, that he could not so much as learn the names of all the abbots, much less could he arrange them in a chronological series. Sometimes he has recourse to conjecture; sometimes he leaves blanks to be filled up by posterity, if among all her idle labours she should be so inclined.

It seems demonstrable that there was no ancient chronicle from which he drew his information. Between 1445 and 1460, one *Flutere* is said to have been abbot of Kinlos. The name seems corrupted, but that is nothing to the argument which I am to use. "Ab initio Flutere," says Ferrerius, "abbatis 17mi, ad 23um abbatem, Dominum Robertum Reid, qui nunc vivit, *singula rite tene-*
"mus."

"*mus.*" By fixing his æra of certainty from the days of *Flutere*, as he calls him, he shews that he had tradition for his guide. Tradition might serve for a period of sixty or seventy years back from Ferrerius's arrival at the monastery, but it could not go much farther back, and therefore he says, that from the days of this *Flutere*, "*singula rite tenemus.*" Had there been a chronicle preserved in the monastery, the names of the abbots, with their *entrances and their exits*, would have been known; for Abbots are the principal groupe in every monastic composition.

Having thus drawn up an history of the abbots of Kinlos, Ferrerius proceeded in his literary course, and, in 1545, drew up an history of the Noble family of Gordon, a family worthy of a better historian.

To this work, he says, he was incited by Mr William Gordon, the cousin and secretary of the Earl of Huntley. In the preface to this work he ventures to lay down a very convenient principle, however inconsistent it may be with that zeal for truth which is the first duty of every historian: "*Satis est in historia si singula narrentur simplicissimè, quo modo ab ipsis viris bonis et strenuis geri poterint: absit tantum mendacium illud quod ab omnibus facillè deprehenditur.*" So that the maxim, "*Ne quid non veri,*" ought to be changed into that more courtly one, "*Ne quid non verisimile.*"

Should we apply this maxim to the history of *Regiam Majestatem*, the establishment of that code of laws by David I. as related in the chronicle of Kinlos, was what "*a viro bono geri poterit;*" and the account of its establishment is such, that "*absit mendacium illud quod ab omnibus facillè deprehenditur.*"

I do not enter into the particular inquiry, how well Ferrerius has succeeded in delineating the history of the family of Gordon: there are, however, some passages in the very beginning of his work which merit attention.

In describing the origin of the family of Gordon, Ferrerius has these words: "In eorum principum virorum numero qui Malcolmum [III.] juvarunt, fuerat quidam vir fortissimus, Gordonius genere, *cujus nomen proprium non satis tenetur*, qui paulo ante, apud

“Huntileæ filvæ, immanem aprum, omnia populantem, interfecit:—
 “ille idem Gordonius, cùm prudentiâ tùm viribus insignis, (quo
 “tandem nomine censerì lubeat), valde charus erat Malcolmo Regi,
 “a quo *Dominus Gordonius creatus est*; et, ab interfecto apro, etiam do-
 “minium Huntileæ per Malcolmum accepit.”

The distress of Ferrerius in finding a hero without a proper name in the days of Malcolm III. might make even an antiquary smile. This little particular shews how ignorant Ferrerius was of Scottish history. He never could have discovered the royal family of the Stewarts in Walter Allanson.

The natural and obvious import of the words, “*Dominus Gordonius creatus est*,” is, that “this person was created Lord Gordon;” and yet Ferrerius, when he mentions the successors of this *Dominus Gordonius* during many generations, mentions them under the description of *Eques*, *Eques Auratus*, *Adamus Gordonius*, and the like, without any addition of honour. The contradiction between one part of his narrative and the other is striking, and it serves to shew how little precision there was in his ideas *.

After having mentioned the creation of his Lord Gordon, Ferrerius adds, “A Malcolmi verò Tertii ætate, de quo nunc loquimur, ad
 “Gulielmi Regis tempora, annos plus minus centum triginta,
 “magna cum laude stetit familia Gordoniorum, officiosissima suis
 “regibus: sed eorum nomina et gesta adeo negligenter sunt tra-
 “dita, ut non lubeat tanquam comperta, mihi ignota, pro veris tra-
 “dere. Hanc curam illis relinquo qui commodius possunt, cùm Hy-
 “bernicos tùm Scoticos annales, vulgariter conscriptos, evolvere: mihi, *Italo*
 “*homini*, non satis vacat illa legere peregrina, quæ ipsis indigenis
 “magnum facessunt negotium.”

This is an expeditious method of disembarassing himself of an

* If by the words, “*Dominus Gordonius creatus est*,” Ferrerius meant, that “that person obtained a charter of the lands of Gordon from Malcolm III.” he was possibly not far wide of the truth. The expression, “*creatus est*,” if understood in this loose sense, will remove the contradiction in the narrative of Ferrerius.

hundred and thirty years of genealogical history. One would be apt to conclude, that in the days of Ferrerius there existed annals of ancient times, drawn up in the Gaelic and Scottish languages, although he, *homo Italus*, had no abilities to understand, nor leisure to study them!

Ferrerius, leaving the annals, "*cùm Hybernici tùm Scotici*," repairs to the continent in search of a Gordon with a Christian name: "*Qui ergo primus nominatim occurrit, in antiquis historiarum annalibus, est Bertramus Gordonius.*" This person, according to Ferrerius, was sent by William the Lion with some auxiliary forces to Philip King of France, and had the honour of killing Richard I. at the siege of Chaluz in the Limosin. Thus is Bertram de Gourdon, a French cross-bow-man, and a subject of Richard I. converted into a Scottish General. Every one knows, that Bertram de Gourdon, being asked, Why he had directed an arrow against the King? made answer, "Because *he* slew my father and my two brothers." How this is applicable to the history of Bertramus Gordonius the commander of the Scottish auxiliaries, let every one judge*.

The observations which I have made, are drawn from *three* paragraphs, comprehending little more than *one* page of Ferrerius's history; 4to MS. *Advocates library*. They may serve for a specimen of his abilities and accuracy.

The next attempt of Ferrerius was greater: he undertook to write a continuation of the Scottish history, left imperfect by Hector Boece †.

About the middle of the sixteenth century Latin had become a living language over great part of Europe. Our countrymen of this age, occupied in philosophy, politics, and the lucrative arts,

* Gourdon is a bourg in Quercy; the other particulars here mentioned may be found in the English historians, particularly in *R. Hoveden*.

† This was the work of his old age. His dedication to Archbishop Beaton is dated, "*Lutetiae Parisiorum, 12. calend. Jul. 1574.*" In his dedication he threatens to publish the life of his patron. But it is probable that death prevented him from striking on the *black rocks*.

are less addicted than formerly to the study of ancient languages: hence the talent of writing Latin, which was common to every pedagogue two hundred years ago, is *now* considered as a mark of some eminence in the republic of letters.

To this accident it is probably owing that modern writers have quoted the continuation of Boece by Ferrerius.

The truth is, that Ferrerius wished to find materials for an history of Scotland, but found them not. In his dedication to Beaton Archbishop of Glasgow, he says, that in publishing the MS. of Boece, containing the life of James II. he found some proper names left blank, which unfortunately he could not fill up. "Perquirenti mihi de "*senioribus*, qui proximè ad eam ætatem vixere, quousque, recenti "*memoriâ* quæ tunc contigissent, probabile fuit tenere potuisse, nihil "*omnino* sum adsecutus." The principal blank is as to the names of the daughters of James I. One of those ladies married an Earl of Huntly. Ferrerius, when writing the history of the family of Gordon, says, that her name was either Joan or Annabel. In publishing the history of Boece, he leaves a blank for her name, so that it may still be either Joan or Annabel *.

In his dedication he modestly terms his labours, *Sylva historia*, rather than *historia*; and he expresses his hope, that some one, "getting out of the wood," [*"e sylva digrediens"*], may be enabled to write an history; as to himself, he laments in his preface the death of Henry Sinclair, Bishop of Ross, and of his brother, from whom ample information had been expected.

He adds, "Nos igitur his omnibus ferè scriptionis nostræ adminiculis defraudati, cum nulla amplius se porrigeret occasio, nisi "*obscura*, qua verè niti hac in parte quæremus, non semel quæ per

* Let me observe, in passing, that Pitscottie's life of James II. is in effect a transcript from Boece. Pitscottie indeed says, that Boece, and his translator Ballantyne, "ended "their chronicle at the slaughter of King James I." This is true as to Ballantyne, but not as to Boece; so that it would seem the writer of Pitscottie's history intended to pass his translation for an original among his unlettered countrymen.—A genuine edition of Pitscottie ought to contain the reigns of James III. IV. and V. and no more.

"nos ex variis scriptoribus collegeramus, suppressere voluimus." A prudent and an honourable resolution! In which however Ferrerius did not persevere; for he published the history of James III.; a work as erroneous as might have been expected from a foreigner, with little other aid than that of John Major, the marriage-contract of James III. and every popular report that he could glean together.

It would be endless to remark all his errors; some of them, however, are so flagrant that they cannot be past unobserved.

He gives this truly wonderful reason for the King of Scots desiring to have St Andrew's erected into an Archiepiscopal see: "Ne turbatis ferè semper in Britannia rebus inter utrosque Reges, ab Eboracensi suorum jamdudum Primate, de rebus plerunque necessariis et propè quotidianis in ecclesia sancta Dei, responsa iniquis confictisque sæpenumero dilationibus, non sine piarum aurium offensione, expectanda forent."—As if, in the age of James III. any Scotsman ever thought of appealing from his diocesan to the Archbishop of York, or of expecting his response! Ferrerius gravely adds, "Diploma conceptum est quo Scotorum ecclesia a jurisdictione Eboracensis in Anglia Archipræfulis, olim sui Primatis, est soluta." He had by this time forgot his own early maxim, "Absit tantum mendacium illud quod ab omnibus facilè deprehenditur." Upon the historical authority of a person so supinely or so perversely ignorant of Scottish affairs, does one great argument for the high antiquity of *Regiam Majestatem* depend!

Ferrerius, like all superficial foreigners, is liberal in bestowing titles of dignity. Thus, about 1483, he mentions, "Johannes Comes à Cassilis," and "Ramsfaius auctus paulo ante ab Rege comitatu de Bothwell;" and yet, in 1486, they themselves took no other titles but "Johannes Dominus de Kenedie," and "Johannes Dominus de Bothwell, Milites;" *Rymer. Foed. tom. 12. p. 285. & p. 316.*

Again, he says, "Hoc eodem tempore *delecti* sunt aliquot regni barones, nimirum ab Hume, Torrekis [probably Hereis of Terreglis],

"reglis], Olyphant, Drummonde, *MyLordi*, ut ipsi vocant, in supplementum parlamenti eorum."

From the strain of the history, this is supposed to have happened in 1483.

What may be the meaning of "*delecti* in supplementum parlamenti eorum," is hard to say. It seems to import the supplying of vacant places in parliament, as if the peerage of Scotland had been upon the footing of a Roman senate!

The using the word *MyLordi*, affords a presumption that Ferrerius was little conversant in the Scottish language. The notion of *My-Lord* being one word, is, at this day, universal among uninstructed foreigners: it is a word which Ferrerius labours to inculcate upon his readers. Thus, among the conspirators at Lauder, he mentions "Andreas Grayæ, Robertus de Lyle, *MyLordi* ut vocant."

In what Ferrerius says concerning these "*delecti MyLordi*," there are almost as many errors as words.

At what time Lord Hereis of Terreglis became a Lord of parliament, is uncertain. The first time that he appears upon the rolls of parliament, is on the 7th February 1491, in the reign of James IV. It is probable enough that he may have been a Lord of parliament before that time; so that supposing him to be the *Lord Torrekis* of Ferrerius, we cannot assert that the account given of his creation is false.

But the account given of the creation of the other three Lords is grossly erroneous.

Olipant. In the roll of charters there is a charter, dated 7th November 1468, in favour of "*Laurentii Domini Olifant*" of the barony of Owres.

The most ancient roll of parliament now on record, is that of the year 1469. In it *Olipant* is marked among the *Domini*, and so also in the next roll, 1471.

Hume. The record of parliament 1473, mentions the creation of Lord Hume in the following words: "Mem. quod, 2do die Augusti, "in præsentia parlamenti, Dominus Alexander Hume, de Eodem, "Miles, effectus fuit Dominus parlamenti."

"*Drummond*."

Drummond. The record of parliament 29th January 1487, mentions the creation of Lord Drummond in the following words: "Joannes Drummond de Cargill effectus fuit Dominus parliamenti, et in futurum nominandus Dominus Drummond."

Thus it is plain, from evidence on record, that the Lords Oliphant, Hume, and Drummond, instead of being made Lords of parliament in 1483, and at one time, were made Lords of parliament at different times; two of them long before 1483, and the third several years after; and consequently that Ferrerius has heaped up blunder upon blunder*.

Such was the author of the Chronicle of Kinlos, such his sources of information, and such his accuracy! Let us now consider his famous testimony in favour of the high antiquity of *Regiam Majestatem*. It runs thus, "*Proditum est memoriae*," not by the ancients, I presume, who could not remember the names of the daughters of James I. "*Proditum est memoriae*, Regem David, sub initium suæ in "*Scoticam rempub. administrationis, unà cum regni primoribus*, "*fui imperii terminos lustrasse omnes; sed cum ubique magnam*

* From a passage in Ferrerius, one of our writers has drawn a curious argument in support of national vanity. In describing the marriage of James III. Ferrerius is pleased to say, "Quantus fuerit ille dies, quàmque celebris, et non pauci sequentes, non solum in ornatu splendoreque verè regio, mensarum lautitia, atque omni genere apparatusque ciborum, verum quoque in diversis spectaculorum representationibus, vix ullus queat bene dicendo satis pro dignitate referre."—*Abfit tantum mendacium illud.*—Hence Abercrombie takes occasion to observe, vol. 2. p. 407. "The very sight of such a Queen could not but endear her to all ranks of people; who, to congratulate her happy arrival, and to create in her a good opinion of themselves and the country, entertained her and her princely train for many days with such variety of shews, and such delicious and costly feasts, that Ferrerius, a foreigner, who had seen all the gallantry and pomp of the courts of France and Savoy, tells us, that no pen can describe them so much to the advantage as they deserve; a proof, I take it, that the court of Scotland was in those days one of the politest and none of the most indigent in Europe." Abercrombie had forgot that Ferrerius did not assist at the marriage-feast, not having been born at that time, and not having come to Scotland till threescore years after it.

"confexisset

“ conspexisset vastitatis solitudinem, conversum, *aiunt*, ad proceres
 “ dixisse, Ecquid in orbe terrarum sic passim [se] haberent regna?
 “ ac cum accepisset, multo aliter apud exteros haberi regna, non pa-
 “ rum dolens, inquit, Quid ergo impedit, quo minus nos, ve-
 “ strum omnium adminiculis fulti, rempubl. a majoribus negligenti-
 “ us tractatam, externorum regum exemplo bono, in formam
 “ aliquam decentiorem cogamus? Responsum est a nobilioribus, Si
 “ Rex in animum induceret suum hujusmodi opinionem, facilè ad-
 “ inventurum et consultores bonos et auditores quoque. Id cum au-
 “ divisset Rex optimus, præ animi lætitiâ gestiens, hilariorque factus,
 “ gratias egit suis illis nobilibus, de tali erga se et rempublicam a-
 “ nimo; identidem pollicens, auspice Deo, et vitâ comite, se
 “ manibus pedibusque curaturum, ut meliorem multo posteris tra-
 “ derent rempublicam quam a majoribus accepisset. Ac cum vi-
 “ deret duo potissimum existere per quæ flourerent humanæ respubli-
 “ cæ, scilicet, religionem, et bonarum legum constitutionem, utrique
 “ animum admovit.”

“ Primum aliquot nobiliores, in quibus inerat summa prudentia,
 “ cum *justa eruditione* conjuncta, delegit, quos in externas gentes
 “ mitteret ad describendas leges et mores probatissimos. *Brevi fa-*
 “ ctum est, ut, multis legibus ac ritibus in unum conscriptis, hi viri
 “ nobiles ad Regem suum non inexpectati redierint. Post aliquot
 “ dies, ipsius Regis imperio, coactum est ex universis regni finibus
 “ concilium, *ad deligendas ex eo tabularum acervo leges*, Scotico po-
 “ pulo postea futuras in jure dicundo non malas; et ut paucis ab-
 “ solvam, omnium assidentium consensu, *ab illis collectaneis selectum*
 “ *est jus municipale ac patrium*, quod etiam nunc vulgo *Regiam Maje-*
 “ *statem* dicunt;” *Hyst. Kinlos*, p. 17.—And so *Regiam Majestatem*
 was composed.

This is the whole of Ferrerius's narrative, termed by some, “The
 “ *old record of Kinlos.*” It is indeed the old tale of the Decemvirs
 heavily told. It differs in all its circumstances from that which is
 told by the compiler of *Regiam Majestatem*.

He says, “Leges autem et jura regni, scripto universaliter con-
 “ cludi

"cludi nostris quidem temporibus, omnino impossibile est, tam
 "propter scribentium ignorantiam, quam multitudinem caussarum
 "confusam. [Skene adds on the margin, "al. earum. al. jurium ip-
 "forum."]. Verum sunt quædam in curia generalia et frequentius
 "usitata, quæ scripto commendare, non mihi videtur absurdum,
 "vel præsumptuosum, sed ad juvandam memoriam admodum neces-
 "sarium. Horum itaque quandam particulam, ad mandatum Domini
 "Regis David, cum sano consilio totius regni sui, tam populi
 "quam cleri, in scriptis redigere decrevi, stylo vulgari et verbis u-
 "tens curialibus ex industria, ad totius regni notitiam, in hunc mo-
 "dum distinguendum duxi;" *Regiam Majestatem*, lib. 1. pr. § 8.—

10.

According to this account, Scotland was at that period already overstocked with laws, so that a wholesale importation by the *learned* Scottish Nobles of the 12th century might have been considered as superfluous.

The compiler of *Regiam Majestatem* asserts, that he himself was employed to make a selection out of the laws then in force. Ferrerius reports, that a selection was made of laws, gathered together from all nations.

I add, that the one speaks of this singular event having happened towards the beginning of the reign of David; the other, after the great talents of David in war, and the steadiness and impartiality of his government in times of peace, had been fully experienced.

If then we are to believe what Ferrerius relates as *memorie proditum*, we must believe the compiler of *Regiam Majestatem* to have been an impostor; and thus the argument from the authority of the supposed ancient record of Kinlos will overthrow the authority of *Regiam Majestatem* in its present form.

Here I cannot omit censuring the negligence of Anderson. *Firß*, He induces his readers to conclude, that the chronicle which he quotes merits a certain degree of authority, from having been composed in a monastery whereof David I. was founder. And indeed it must be admitted, that if the Chronicle of Kinlos had been a piece

of ancient patch-work, made up from year to year by the monks from the first institution of their monastery, it would have had all the authority that is due to cotemporary writers, however ignorant or ill-informed. But had Anderson told his readers, that this chronicle was the work of an idle officious foreigner, who knew nothing of Scotland; that he wrote *four* centuries after the age of David I.; and that he ushers in a story, incredible as he relates it, with "There is a tradition," and "They say," the authority of the Chronicle of Kinlos would have dwindled down into the solitary and uncertain testimony of "Johannes Ferrerius Pedemontanus!"

Secondly, Anderson has not only softened the narrative of Ferrerius, by omitting some improbable circumstances, such as, the learning of the Scottish nobles, and their speedy return from their *grand tour*; but he has also taken the liberty of adding this circumstance, that the King "employed his nobles to make a collection of the laws of their own country." In this he probably had an oblique intention of supporting the authority of *LL. Malcolmi*. They were too ancient to be wholly rejected by an antiquary; and, as Anderson elsewhere says, "they are supported by the *positive* judgement and sentiment of the justices of Ireland, in a most solemn case and decision *."

It may be demanded, Was Ferrerius the inventor, or only the reporter, of this idle story? He seems to have been no more than a very

* He means the argument of the Irish judges in the case of *Defective Titles*. It runs thus: "For the antiquity of wardships in England and Scotland, see also *Heñ. Boet.* l. 11. "*Buchanan*, Rer. Scot. l. 6. and the laws of Malcolm II. which prove the antiquity of wardships in Scotland, and therefore in England, before the Norman conquest: for in those times it is probable the laws of both nations did not much differ. As for the times after, it appears they did not, by comparing their *Regiam Majestatem* and our *Glanville*. Neither is the bare conjecture of Sir Henry Spelman sufficient to take away the force of those laws; vid. *Spelman. Gloss. voc. Feudum*." This crude argument, or, as Anderson terms it, this positive judgement, ought to teach all judges to be cautious how they decide concerning foreign laws which they do not understand.

credulous reporter; for the story may be traced nearer to its source. In Lord Auchinleck's MS. formerly mentioned, there are to be found certain statutes in the vulgar language, under the name of David I. but which are probably the statutes of David II. and are published as such by Skene. Then follows, "Here endis the lauwis
 " mad be Kyng Davy, the haly sone of Kyng Malcolmie, and of St
 " Mergarit; the quhill St David fundit the worthy abbay of Dunf—
 " And because thar wes in that tyme sa many fundry maner of
 " men in Scotland of divers naciouns, and divers conditions, the
 " quills held ilkan fundry maner of lauwis and consuetuds, that
 " na man stud aw off an uther; and that tyme wes the noble abbay
 " of Dunfermlyn be the said Saint Davy fundit and byggit in the
 " honour of St Mergarite his moder; in the quilk tym he mad mo-
 " ny castell, and abbays, and chanounryis, with fundry nouneris
 " and mayson Dieuwis, that is to say, almis houffes, in the honour of
 " God and our Lady fuet Saint Mary, and began [*sic MS.*] *throu a*
 " *visoun he met in his slep* at Dunfermlyn; than send he efter his ba-
 " ronnis, and chesit out xxiiii. of the wisfast and most hable men to
 " — and gert tham be sworn, that thay fuld passe *twa and twa* in
 " cumpany togidder, over all the Cristyyn kynriks, and wryt up all
 " the lauwis of ilke land, bath in burcht and in land, and geff
 " tham *twa yers* space to do this, and cum again til hym; and
 " quhen they come agayn, thay fand the Kyng at the New-castale
 " upon Tyn makand and biggand the castalle, and uthir syndry ab-
 " bays of blak monks and of quhyt, and of quhyt chanounis and
 " nownerys, and maison Diewes, and thar he mad and stablest all
 " his lauwis of Scotland, bath in burch and in land, be hale af-
 " sent of all his prelatiis, lordis, baronis, burgissis, and commouns."

The same curious preamble is to be found in another MS. belonging to Lord Auchinleck, which is prefixed to a copy of *LL. Burgorum*, in the vulgar language.

I presume that Ferrerius had seen this preamble in Latin, and from it drew up his narrative. He prudently omitted the most improbable and ridiculous circumstances, such as the vision at Dun-
 " fermline,

fermline, the sending out transcribers *in pairs*, and the oath which they took to transcribe *all* the laws of *all* Christian kingdoms, "as well in bouch as in land."

It will not be expected of me that I should bestow many words in proving this preamble to have been an invention of an age much later than that of David I.; the very mention of *David First* would probably bring it down to the times of David II.: much less will it be expected of me, that I should offer any arguments for proving it to be an improbable and absurd fiction, and only deserving a place in the *ancient* Chronicle of Kinlos, composed, in 1537, by Johannes Ferrerius Pedemontanus.

SECTION

SECTION III.

Regiam Majestatem quoted in the Statute-book.

I Come now to the prime argument in support of the high antiquity of *Regiam Majestatem*; it is this: "Our statute-book frequently refers to it as authentic."

Those references are not all of one age, and therefore they ought to be considered separately.

I. The first statute of William the Lion refers to "*Affisa Regis David*." The passage referred to is to be found in *Regiam Majestatem*, lib. i. c. 16.; and it is remarked, that William the Lion began to reign no more than twelve years after the death of his grandfather David I.—Again, the 12th statute of Alexander II. provides, "Quod in quacunque provincia catallum fit furatum et calumniatum, ducatur ad locum, in quolibet comitatu, ubi Rex David statuit catalla calumniata reduci." Those places are particularized in *Regiam Majestatem*, lib. i. c. 20.

Hence Skene concluded, that *Regiam Majestatem* was an authentic work, drawn up in the age of David I.; and Anderson, no less precipitant in his conclusions, says, That these are two "irrefragable proofs" of Skene's proposition; *Independency of Scotland*, p. 138.

In considering these "*irrefragable proofs*," it will be necessary to adjust the terms of the controversy, which both Skene and Anderson seem to have overlooked, or to have mistaken.

They who assert, that *Regiam Majestatem* is a transcript from Glanville, never asserted that every chapter of that work was transcribed from Glanville: however attached they might be to a favourite hypothesis, they never could have asserted such an absurdity; I call it an absurdity, because many passages in the Scottish collection are not to be found in the English.

Such being the indisputable state of the fact, I do not see why a reference in the statutes of William the Lion to the 16th, or in the statutes of Alexander II. to the 20th. chapter of the first book of *Regiam Majestatem*, should afford any proof, or even presumption, that *Regiam Majestatem*, whenever it corresponds with Glanville in words or in periods, is not copied from Glanville.

If the 16th chapter of the first book of *Regiam Majestatem* were to be found in Glanville, the argument from the 1st statute of William the Lion would be cogent. As that prince was a legislator before Glanville was Chief Justice of England, a law quoted by William the Lion might be presumed to have existed before *Regiam Poteftatem* was composed; and the same law, if inserted by Glanville into his work, might be presumed a copy from some older original. But Glanville's work does not contain this celebrated 16th chapter; nor indeed could it.—Let me for a moment suppose, that the Chief Justice of England, after taking William the Lion prisoner, had purloined his grandfather's laws, had suffered himself to be detected with that chapter in his possession, and had asserted it to be his own property. On this supposition, Glanville would have been a more silly thief than any that ever stood before him in the court of King's-bench; for the very geography of the statute is Scottish, and could never be adapted to the meridian of England.

If the 20th chapter of the first book of *Regiam Majestatem* were to be found in Glanville, the argument would not, in all respects, be equally cogent as the one last mentioned; for Alexander II. was not a legislator till after the days of Glanville. Still the argument from the contents of that chapter would be equally cogent; for it is an ordinance entirely Scottish, and never could have any relation to England. But neither is that chapter to be found in Glanville.

It will be admitted by those who hold *Regiam Majestatem* to be the original, and *Regiam Poteftatem* to be the copy, that Glanville has inserted some passages respecting the state of England; and that this circumstance is consistent with the supposition of his being upon the whole a copist. By parity of reason, they who hold *Regiam Poteftatem* to be the original, and *Regiam Majestatem* to be the copy, may admit,

admit, that the author of *Regiam Majestatem* has inserted some passages respecting the state of Scotland, such as the 16th and 20th chapters of the first book. But this circumstance is consistent with the supposition of his being, upon the whole, a copist.

I do not pretend to determine, whether the author of *Regiam Majestatem* copied from Glanville, or Glanville from him. Upon either hypothesis, the 16th and 20th chapters of the first book of *Regiam Majestatem* stand clear of being copied either from Glanville or by him.

And thus, I apprehend, it is evident, that the reference in the statutes of William the Lion and Alexander II. to the laws of David, proves nothing in support of the authenticity of *Regiam Majestatem*.

II. From the time of Alexander II. until the restoration of James I. I can discover no allusion in our statute-book to *Regiam Majestatem*. Alexander II. died in 1249; James I. was restored in 1424: so that here there is an interval of full 175 years; and as it is probable that the 12th statute of Alexander II. was enacted early in his reign, we may venture to compute this silent interval to be no less than two centuries.

Here the reader will also keep in remembrance, that between the accession of David I. and the restoration of James I. just three centuries intervened.

III. After this "long, dark, tempestuous night," evidence arises in aid of the authenticity of *Regiam Majestatem*. The statute 54. parl. 3. James I. 1425, provides in manner following: "It is sene spedful
" and ordaint be the King and the parliament, that sex wise and discrete men of ilk ane of the thre estatis, the quhilks knawis the
" lawis best, sal be chofyin, quha, sen fraude and gyll aw to help no
" man, sal se and examyn the bukis of law, that is to say, *Regiam Majestatem*, and *Quoniam attachiamenta*, and mend the lawis that
" nedis amendement."

I propose to shew, what this statute does, and what it does not so certainly, seem to prove.

It seems to prove, that *Regiam Majestatem* was not a work compiled during the reign of David II. Between the death of David II. and
this

this ordinance, there intervened a period of fifty-five years, and no more. Had *Regiam Majestatem* been compiled during the reign of David II. there could have been no occasion for "seeing, examining, and mending," a body of laws so recent!

To this I add another chronological argument, which appears to have some weight. Cardinal Wardlaw, secretary to David II. died in 1389. His nephew Henry Wardlaw was promoted by him to the rectory of Kilbride, and the precentorship of the cathedral of Glasgow. He was made Bishop of St Andrew's in 1404, and was Chancellor of Scotland during the whole reign of James I. It will be admitted, that the statute 54. parl. 3. James I. 1425, was either drawn up by him, or under his direction. Now as Bishop Wardlaw was beneficed by his uncle, it is probable that he had come to man's estate before 1389, when his uncle died. Bishop Wardlaw, educated under the Cardinal, secretary to David II. must have known whether *Regiam Majestatem* was an ancient or a very modern composition. This 54th statute shews, that he considered it as an ancient composition; and hence, independent of all other arguments, there arises a cogent reason for believing that *Regiam Majestatem* was not compiled by the command of David II.

As to the proposition, That this 54th statute proves *Regiam Majestatem* to be an authentic and authoritative treatise of the law of Scotland, I must observe, that an indelible character of authenticity will not be stamped upon this treatise, merely by its being called a *book of law*. To distinguish between a *book of law* and a *law-book*, requires more critical accuracy than probably fell to the lot of the Scottish parliament in 1425. The expression, if it means *law-book*, can prove nothing as to the authenticity and authority of *Regiam Majestatem*. I mention this the rather, because it has been supposed of late, that the statute runs thus: "Buikes of the law."

They who imagine, that, in 1425, the parliament *could* ascertain the authenticity of *Regiam Majestatem*, must also admit, that, in 1425, *Regiam Majestatem* was considered by parliament as a treatise which greatly stood in need of being "mended." This appears from

from the qualifications required in the commissioners, and from the nature of the task imposed on them.

It is impossible to determine *what* were the amendments of *Regiam Majestatem* projected by parliament in 1425. I can scarcely believe, that, towards the beginning of the fifteenth century, our forefathers were so well skilled in chronology, as to perceive, that the anachronisms of *Regiam Majestatem* were to be mended, before it could be held as a treatise compiled by command of David I.

I say nothing as to that anachronism which the frequent quotations from the *Corpus Juris Justiniani* are supposed to prove; *that* depends upon the credit of a very doubtful story, the discovery of the Pandects at Amalphi in 1137.

The anachronism which I point at, respects the frequent allusions in *Regiam Majestatem* to the Decretals of Gratian, published in 1150, just before the death of David I. and to the Decretals of Gregory IX. published in 1230, during the reign of Alexander II. great-grandson of David I.

That *Regiam Majestatem* does contain such allusions to the Canon law, will admit of little dispute, when the following passages are candidly weighed.

Regiam Majestatem, l. 2. c. 14. § 4. "Servitus sumpsit exordium
" ab ebrietate Noæ." This wire-drawn inference from scripture is to be found in Gratian's *Decret. part 1. dist. 35. c. 8.*

Regiam Majestatem, l. 2. c. 13. § 13. "Cedit enim ad ignominiam
" et vituperium ecclesiæ, cum clericus revocatur ad statum servilem."

The Decretals of Gregory IX. l. 1. tit. 18. c. 1. run thus: "Forte
" dicet aliquis, clericus fieri non permittitur nisi ante clericatum in-
" genuitatis dignitate potietur. Revera verum dicit; et ideo quod
" infamari vel vituperari potest, præcaveri debet *.

Regiam

* I much doubt whether the first part of this chapter of *Regiam Majestatem*, "De
" servis non ordinandis ad sacros ordines," was ever the law of Scotland. My doubt
arises from the terms of a contract between Walter Cumming Lord of Badenoch, and

Regiam Majestatem, l. 2. c. 13. § 14: "Et si iudicio reddi debeat, deponendus est, vel degradandus, antequam reddatur." The Decretals of Gregory IX. l. 1. tit. 18. c. 2. run thus: "Decretum est ut deponatur." I suspect however that the passage in *Regiam Majestatem* is derived from a still later source, from the Canons of the Scottish church, drawn up in 1242 and 1269, where the following provision occurs, Can. 28. "Statuimus etiam, clericos in quolibet ordine ab ecclesia esse defendendos, donec, *exigente iustitia*, propter immanitatem criminum a susceptis ordinibus *degradentur*."

Other examples of the same nature have been formerly mentioned, and were it necessary their number might be enlarged; but enough, I presume, has been said to remind the reader of the frequent allusions to the Canon law which are discoverable in *Regiam Majestatem*.

In all those passages, *Regiam Majestatem*, if considered as a treatise drawn up by command of David I. ought certainly to have been "mended."

Another observation arising from this 54th statute, is founded on the mention there made of *Quoniam attachiamenta*. It is plain that the parliament considered *Quoniam attachiamenta* as of equal authority with *Regiam Majestatem*, for that they are jointly termed "buiques of law;" and if the expression implies "books of the law of Scotland," then *Quoniam attachiamenta* was supposed by the parliament 1425 to be a book of the law of Scotland, as much as *Regiam Majestatem*. Now I would ask what reason is there for this supposition? I admit that it is a treatise of authority in the law of Scotland, and that it contains much of our ancient usages; but, until I am better instructed, I can admit no more. A treatise, anonymous, and of

Andrew Bishop of Murray, [bishop from 1222 to 1242], where this clause occurs: "*Clericos et laicos nativos habebit Episcopus Moraviensis, et successores sui, cum catallis suis, et possessionibus omnibus, et liberos eorum, cum omni posteritate sua, et catalla eorundem liberorum;*" *Chart. Morav.* vol. 1. p. 13.

unknown date, is called a "buike of law" by parliament in 1425, and is appointed to be "mended." Hence Skene concludes, *Not. c. 1.* "Hunc tractatum esse authenticum, et vim legis obtinere." From the same premisses he had drawn the like conclusion as to *Regiam Majestatem*; *Not. L. 1. pr.* If this be the sentiment of the partisans of the high antiquity of *Regiam Majestatem*, they are as much bound to maintain the authenticity and authority of *Quoniam attachiamenta*, as of *Regiam Majestatem*. This will lead them into another field of difficulties, of which perhaps they are not aware.

A very candid and intelligent writer has remarked the similarity between the brieves of *Novel Disseisin*, and of *Mortancester*, in the *Registrum Brevium*, and in *Quoniam attachiamenta* *. The partisans of the high antiquity of *Regiam Majestatem* must hold, either that the brieves both of England and of Scotland were copied from some one common foreign model, or that the form of the English brieves was copied from a Scottish model. The antiquaries of both kingdoms will concur in combating the former hypothesis. I leave the antiquaries of each kingdom to attack and to defend the latter. To my countrymen I will be so far partial, as to remind them of the unfortunate systems of Gale and Huet, who derived the whole Heathen mythology from a Jewish source.

The next statute wherein I find mention of *Regiam Majestatem*, is act 115. parl. 14. James III. I have searched for it in the register-house, but to no purpose; so great is the confusion in our records at that period. I am therefore under the necessity of transcribing it from the statutes as printed. The act runs thus: "The haill estates hes committed full power of the haill parliament to the persons under written, to advise, commoun, and refer againe to the nixt parliament or general councill, anent the reduction of the Kingis lawes, *Regiam Majestatem*, actes, statutes, and uther buikes, to be put in ane volume, and to be authorized, and the lave to be

* *Barrington. Observations on the more ancient statutes, p. 111.*

" destroyed,

"destroyed, viz. four for ilk ane of the three estaites; and the prelates ar accorded to make the coaste of their clerks, and the barones the expences of their persones, and the burrowes of their commissioners."

There are ambiguities in this statute, which at the distance of near three hundred years are of difficult explanation. What is meant by *the Kingis lawes*? Is it the statutes of James III. or the statutes of him and of all his predecessors? or is it a general appellation for the law of the land, whereof the particulars follow?—What is comprehended under the expression of *Regiam Majestatem*? Is it only the treatise beginning with those words, or also every treatise bound up with it? If the former, what becomes of *LL. Burgorum*; which, were it not for a sovereign act of legislative power, is a treatise better authenticated than *Regiam Majestatem* itself? What becomes of *Quoniam attachiamenta*, which was put upon a par with *Regiam Majestatem* by the 54th statute of James I. 1425? If under "*Regiam Majestatem*" every other treatise bound up with it was comprehended, would not the commission of parliament be subservient to the caprice of transcribers, and even of bookbinders?—I can understand what is implied by "acts and statutes;" but my respect for parliaments will not carry me so far as to include in it the *LL. Malcolmi*, nor my respect for the critical discernment of Skene, the *Secunda statuta Roberti I.* I can prove that *LL. Malcolmi* are an inconsistent forgery; and every one knows how little authority ought to be granted to *Secunda statuta Roberti I.*—But the greatest difficulty of all is as to the import of the expression, "uther buikes." If it means every treatise under the same cover with *Regiam Majestatem*, then *Modus procedendi super duellum*, &c. are of equal authority with *Regiam Majestatem*.

It seems to me that the statute 115. James III. neither bestowed, nor meant to bestow, authenticity on *Regiam Majestatem*, or on what is there called "uther buikes." The purpose of the legislature, if I mistake not, was this; Out of all the statutes, ordinances, forms of procedure, treatises of law to compile *one Code*. The legislature did

did not determine what degree of authority was due to any one of the treatises then existing, but proposed, out of the whole, to form a body of laws. It ordained "the lave to be destroyed;" thus *prescribing* what Justinian, *De Conceptione Digestorum*, only *intended*.

If this interpretation of the 115th statute of James III. be just, the reader is left to determine, whether any argument arises from that statute in support of the authenticity and authority of *Regiam Majestatem*.

I say nothing of the later ordinances or statutes where *Regiam Majestatem* is mentioned: they are conceived in terms as general as those of the 54th statute James I. and 115th statute James III. With respect to the supposed æra of *Regiam Majestatem*, they may be considered as modern: and it is now an undisputed truth, that most of the ministers of James VI. had a very scanty knowledge of the laws and constitution of Scotland.

The argument in support of the high antiquity of *Regiam Majestatem* drawn from the acknowledgement of the Scottish legislature, must depend upon the statutes which I have quoted and examined. I leave the argument with those persons, who, not having framed to themselves an hypothesis, will not take *that* for granted which ought to be proved.

L

INQUIRY

I N Q U I R Y

Into the AUTHENTICITY of

LEGES MALCOLMI.

IT was the general opinion of our elder historians, that the collection called *Leges Malcolmi* did contain the laws of Malcolm II. Skene, too apt to take things as he found them, saw no difficulty in adopting this opinion: with him many later writers agree.

But Sir Henry Spelman, *Treatise of Tenures*, c. 14. p. 27. 28. and Lord Kames, *Essays concerning British Antiquities*, p. 7.—12. have proved, that those laws must be referred to some later æra. It is therefore to be hoped that we shall hear no more of the fable of the laws of Malcolm II.

He being thus set aside, it may be fit to inquire, whether the laws now extant under the name of *LL. Malcolmi* can be attributed to Malcolm III. *This* is the modern and generally received opinion: nevertheless I am persuaded, that *LL. Malcolmi* are the composition of a later age, and instead of being authentic, bear the certain marks of forgery.

The evidences of this proposition are so numerous, and so clear, that it is surprising they should have escaped, in some measure, the observation of our writers.

I begin with the famous first chapter, which alone has furnished matter for endless controversy. In Lord Cromerty's MS. so often mentioned, there is a preamble to that chapter, either not known to, or industriously

industriously suppressed by Skene. It runs thus: "Sequuntur Leges
"Malcolmi MacKyneth, qui fuit rex victoriosissimus super omnibus
"nationibus Angliæ, Walliæ, Hiberniæ, Norvegiæ. Ipse dedit,"
&c.

Sir James Dalrymple, zealous as he was for the authenticity of
L.L. Malcolmi, acknowledges this preamble to be an interpolation;
Historical Collections, p. 400. By what rule he could distinguish it
from the rest of the chapter, I am yet to learn. His knowledge in
Scottish antiquities made him perceive, that the words, "Et nihil
"sibi retinuit in proprietate, nisi regiam dignitatem, et montem
"Placiti in villa de Scona," were not to be interpreted literally; for
that the King certainly retained his castles, such as Fort-Teviot,
Glamis, and Kincairdin, besides the royal dignity, and the Moot-
hill of Scone. It seems, however, improbable that the King should
retain his castles, and at the same time quit the domains belonging
to them: so that here an extraordinary latitude of interpretation
must be admitted.

The expression, "Dedit et distribuit totam terram de Scotia ho-
"minibus suis," will not sound strange to those who are ready to
credit any old writing that asserts the crown to be the fountain
of property, as well as of honour*.

There are who consider this royal munificence as utterly incon-
sistent with the supposition of Scotland being an established monar-
chy before the times of Malcolm Mackenneth, or even of Mal-
colm III. Hence it has been supposed, that "tota terra de Scotia,"
did not imply the whole lands of Scotland, but only all the lands
in Scotland which belonged to the Sovereign. Here again an ex-
traordinary latitude of interpretation must be admitted, in order to

* "If we will believe what is cited out of an old *French Customary* in a MS. *Treatise*
"of the *Antiquity of Tenures in England*,—the first British king divided Britain into
"four parts; and gave one part to the *Arch-Flamines* to pray for him and his poste-
"rity; a second part he gave to his Earls and Nobility to do him *Knight's service*; a third
"he divided among husbandmen, to hold of him in *focage*; the fourth part he gave
"to mechanical persons, to hold in *burgage*." Bishop *Gibson's* preface to *Spelman's* re-
mains.

reconcile the *law* and the *fact*. Can that statute be held as genuine, where, even interpolations apart, the obvious sense of words is distorted, in order to make it consistent with historical truth, or moral probability?

But leaving this unexampled instance of generosity in a crowned head, let us consider the second chapter of *LL. Malcolmi*. It treats "De feodo Cancellarii, et ejus clerici." The author has made ample provision for both those officers. The very first fee that occurs is, "Feudum magni sigilli, viz. pro qualibet charta, centum libratarum terræ et ultra; pro feodo sigilli, decem libræ." Here we have a *valuation of lands*, and *that by hundred pounds*. It is remarkable, that no rate of fees is established as to charters of smaller estates; so that either the King granted none such, or they were granted without payment of any fees! two suppositions equally improbable.

For discovering the amount of the different sums mentioned in this and in the following chapters, it will be necessary to inquire, by what standard of money the author calculated.

It seems highly probable, that in the days of Malcolm III. the people of Scotland had the same standard of money as their Saxon neighbours. Now it is certain, that at the Norman conquest (a coinciding æra) the Saxon pound was about three times the weight of a pound of our present money; that there were 48 shillings in the pound, and five pence in the shilling; consequently that a Saxon shilling was a fifth larger than ours, and a Saxon penny three times as large as ours.

Hence, if the author of *LL. Malcolmi* meant, by "*centum libratarum terræ*," and "*decem libræ*," those denominations in Saxon money, the former implies lands of the yearly value of 4800 Saxon shillings, the latter a sum of 480 Saxon shillings; or 5400 shillings, and 540 shillings of our present standard. Most extravagant sums, when the comparative value of money at the Norman conquest, and at this day, is considered*.

* Dr Mackenzie, *Scots writers*, vol. i. p. 470. from this passage in *LL. Malcolmi*, concludes, "that the barons had anciently great territories;" a conclusion exceedingly just, if the *LL. Malcolmi* are once admitted to be authentic.

But it would appear, that the author of *LL. Malcolmi* had no idea of Saxon money, and did not calculate his table of fees by any denomination known among the Saxons. Thus, at § 5. the fees for "litera pacis Domini Regis de morte alicujus," are stated thus: "Clerico pro scriptura, sex solidos, octo denarios." Here *eight pence* are mentioned as quotient parts of a shilling; which proves, that the author could not mean the Saxon shilling, containing only *five pence*.

And here occurs the first great difficulty in the hypothesis, that *LL. Malcolmi* are the laws of Malcolm III. That prince began to reign in 1057, full ten years before the Conquest. We know not with certainty how soon after the Conquest it was that the change from the Saxon to the Norman denomination of money took place: that it took place instantly, is most improbable. So that here we have the Scottish legislature calculating in the Norman manner, at a time when there is reason to believe that manner of calculating was unknown in England.

What increases the difficulty is, that in c. 8. § 1. the author supposes, that payments were made in money, "in Laudonia, et partibus ibidem, inter aquas de Forth et Tyne;" whereas payments, in the more northern countries, were made in cattle. Now, what is the country between Forth and Tyne? Precisely the Anglo-Saxon territories, supposed to be subject at that time to the King of Scots. According to this hypothesis, we must hold, that the Saxons on the north side of Tyne used the Norman denomination of money, while they on the south side retained their own.

But granting that in the days of Malcolm III. money was estimated in Scotland according to the Norman denomination, the difficulty from the exorbitancy of the fees will not be removed.

In c. 3. § 1. we have the daily salary of the *Justitiarius*, "pro qualibet die itineris sui, centum solidi." If we understand this according to the Norman computation, it is *five pounds*; a sum ridiculously large.

The mention of *iter* does of itself seem to point at a later period than that of Malcolm III. Spelman, in *Gloss. voc. Iter*, asserts, that

it was Henry II. of England who first established the *iters*, or ambulatory courts of the Justices. Maddox does not carry their institution further back than the preceding reign, 5to Steph.; *History of the Exchequer*, c. 3. p. 100. and yet it is here supposed, that the *iter Justitiarum* was established in Scotland during the reign of Malcolm III. during or before the reign of William the Conqueror. As this establishment did not take place in England under William the Conqueror, nor under his sons, we may conclude that it was not a Norman establishment. We know that it was a French one; and it is highly probable that Stephen, or Henry II. introduced it from France. But it seems that in Scotland the improvements of interior policy were sooner introduced and perfected than in England; and it may be said, that as Glanville formed a body of laws upon the model of the Scottish *Regiam Majestatem*, so also the institution of the *iter Justitiarum* may have been borrowed from Scotland. If any one inclines to strengthen his early prejudices, or to cherish his national vanity, by such an hypothesis, I cannot pretend to undeceive him.

But to return: In this same c. 3. at § 3. a "*colpindach*," i. e. "a young cow or heifer," is valued at "30 denarii," or 2 s. 6 d. according to the Norman denomination of money; so that the daily salary of the *Justitarius* was equal to the value of 40 heifers, as the author was pleased to calculate it. I shall hereafter shew, that the price of the heifer is beyond all bounds of probability.

In the same chapter, § 5. the daily charge for maintaining six persons at a reasonable rate, "*sustentatio rationabilis*," is estimated at "2 solidi;" that is, according to the Norman computation, 4 d. each: An estimate which seems incredible.

C. 4. treats "De feodo Camerarii." He too has a competent salary, "200 lib.)*. But he must have had some difficulty in making it effectual; for it was to be levied "de eschætis burgorum, et residuum de amerciamentis, toloneis, et custumis, burgorum Domini

* In the reign of Robert I. the fee of the Chamberlain was L. 166 : 13 : 4; that of the Chancellor was L. 133 : 6 : 8; *Exchequer rolls*, anno 1329.

"Regis." It would be a matter of curiosity to inquire, how many were the "*burgi Domini Regis*" in the reign of Malcolm III. and what were their "*tolonea et custume*?"

C. 5. contains the fees of the officers of the King's household; among them are the "*senescallus, clericus liberationis, lardarius, ostiarius coquinæ, factor ignis in aula,*" &c. The steward, the clerk of the liveries, the keeper of the larder, the kitchen-porter, the mender of the hall-fire, &c. The fee of the master-cook and of the kitchen-porter is the same, "*quinque libre.*" The author did not advert, that this parity of wages was inconsistent with the subordination of officers, so requisite in the courts of great princes.

By c. 6. the constable is provided in a salary equal to that of—the clerk of the kitchen, 10 *lib.*; and yet in the very same chapter the author treats of the jurisdiction of the constable as extending twelve leagues round the residence of the sovereign.

Skene hesitates at the mention of this extensive jurisdiction: "In omnibus ferè codicibus," says he, "qui ad manus meas pervenerunt, 12 *leucas* legitur; in paucis, non adeo fide dignis, *duas leucas*; quam posteriorem lectionem usus communis recepit.—Prior lectio 12 *leucarum* confirmatur per statutum Ricard. II. anno 13. c. 3." It is probable that the "*codices non adeo fide digni,*" were recent MSS. where the scribes had taken the liberty of adjusting the *LL. Malcolmi* to the established practice in Scotland.—Skene did not perceive, that the coincidence between the older MSS. and the statute of the 13th of Richard II. leads to this conclusion, that the 6th chapter of *LL. Malcolmi* might have been copied from some English regulation.

In the same c. 6. mention is made of the office of *Marescallus*; but it is not probable that this appellation was known in Scotland during the reign of Malcolm III. [from 1057 to 1093]. Spelman expressly asserts, that this appellation was not known in England before the Conquest; *Gloss. voc. Marescallus*, p. 400. He even delivers it as his opinion, that it was not known in England during the reign of William the Conqueror, or from 1067 to 1087; *Tenures*, c. 14. p. 28.

p. 28. In another place he says, "Quis sub Gulielmo Conquatore fit donandus *Marescalli* titulo, nemo, reor, certus affirmaverit. *Non recepta enim videtur adhuc illa vox a scriptoribus nostris*; et si qui novisse se id officium arbitrentur, adeo dissonis tradidere vocibus, ut lectorem relegant dubitantem;" Remains, p. 165. — Nor does Spelman pretend to trace this appellation any further back than to the reign of Henry I. This circumstance, by the way, might have induced Spelman to hesitate in attributing those laws to Malcolm III.; for it is not probable that the name of *Marescallus* should have been known in Scotland, while it was not known under the Anglo-Saxon government, nor even under the government of the earliest English sovereigns of the Norman race.

In this chapter the jurisdiction of the mareschal is made the same with that of the constable, viz. for twelve leagues round the residence of the sovereign. Skene seems unable to account for this: but had he known of the "*liber ruber Scaccarii*," he would have perceived, that as to this particular also the *LL. Malcolmi* resembled the established regulations in England, as much as if they had been derived from that source.

The 7th chapter contains equal improbabilities as to the extent of salaries. There occurs § 2. "pro feodo clerici [vicecomitis], de quolibet amerciamento, duos solidos;" as if in the days of Malcolm III. every fine exceeded two shillings! and § 3. "pro feodo servientis, unam *colpindach*, [a heifer], vel triginta denarios."

Here I cannot pass over an observation made by Bishop Nicolson, *Scots Historical Library*, p. 109. "I do not much doubt," says he, "but that these parts of Great Britain have all along maintained their commerce in the same methods and fashion with those that are more southern; so that the value of money, and the prices of goods, have generally been at a par amongst the several nations which anciently inhabited this island. An early instance we have of this in the laws of Malcolm II. c. 3. § 7. 8. wherein a *young heifer* is valued at 30 pence; the very same price which is set on an *ox* in some of our Saxon laws, which are supposed to have been enacted about the same time."

Nothing

Nothing can be more crude and erroneous than this observation. Bishop Nicolson supposed, that in *LL. Malcolmi* the Saxon denomination of money took place. Now he might have seen from c. 8. § 1. of those laws, that eight cows were valued at 10 l. or 480 s. Saxon, according to Nicolson's hypothesis; so that each cow was valued at 60 s. Saxon: and a cow, or, as he says, an ox, being valued by the Saxon law at 30 d. or 6 s. it followed of necessary consequence, either that the money, or the prices, were not at par in the two countries of Scotland and England. The prices, instead of being the same, stand thus: A cow in Scotland, 60 s. Saxon; a cow in England, 6 s.; the difference, as *one to ten*. The parity mentioned by Bishop Nicolson was probable in *thesi*; but then this monstrous disparity might have led him to the natural conclusion, that the laws attributed to Malcolm II. were not authentic, and with no great variation of argument, that the laws attributed to Malcolm III. were not authentic.

The truth is, that Bishop Nicolson saw in the supposed law of the one nation, the rate of 30 *denarii*; and in the real law of the other, that of a *mancus*, or 30 *denarii*; hence, without more reflection, he asserted a parity: whereas the one law referred to a Saxon, the other to a Norman denomination of money; and consequently there could be no parity. Had he looked further, he would have seen this; and he would also have seen, that the whole hypothesis, erroneous as it was, depended on an imaginary parity between a *Scottish heifer* and a *Saxon ox*.

The 8th chapter of *LL. Malcolmi* limits a fine in the court of the *Iustitiarius* to "octo vaccæ ex parte boreali maris Scotiæ," and to "decem libræ ultra mare Scotiæ, sicut in Laudonia." The fees to the coroner, and to the clerk, are the same in both districts. Hence it may be fairly concluded, that the author estimated a cow at the eighth part of L. 10 Norman, *i. e.* at L. 1, 5 s. This is a palpable blunder. If a heifer was valued at 30 d. or 2 s. 6 d. and a cow at L. 1, 5 s. or 25 s. it follows, that the value of a heifer to the value of a cow was as 2 s. 6 d. to 25 s. or as *one to ten*. Hence also, if the price of one cow was L. 1, 5 s. the price of 80 cows was L. 100;

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so that the yearly value of "*centum libratæ terræ*," in c. 2. was 80 cows, and no more!

In the beginning of the 14th century, the estimation of cattle was much lower than in this supposed enactment of Malcolm III. It appears from the chartulary of Aberbrothock, vol. 2. fol. 12. that a payment of *four oxen* by the Earls of Lenox, was, in 1317, converted into a payment of two marks of silver; so that, at that time, the price of an ox was *six shillings and eight pence*. The deed containing this conversion is so cautiously conceived, that it would seem the bargain was fair and equal. Thus also Bernard Abbot of Aberbrothock, [some time before 1328, when he became Bishop of Sodor], granted a lease of the lands of Dunnethyn to David de Manuel, bearing this clause, "*Et si dictus David amerciatus fuerit in curia Domini Abbatis pro propria querela, dabit pro amerciamiento, quociens acciderit, quinque solidos, vel unam vaccam*;" Ch. Aberbrothock, *ibid*. So that it would seem the price of a cow at that time was *five shillings*; just *one fifth* of the price in the reign of Malcolm III. This difference in the estimation of a cow overturns the authority of the 8th chapter of *LL. Malcolmi*, although we were to suppose that money had continued of the same denomination and value in the days of Robert I. as in the days of Malcolm III.

Thus have I made some cursory observations on *LL. Malcolmi*, from the 1st to the 8th chapter; and, I think, I have shewn that they are all the composition of some illiterate forger, who had not abilities sufficient to adapt his compositions to the language and manners of the age of Malcolm III. *

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* A friend of mine, distinguished in the literary world, observes, that the *LL. Malcolmi* "are the composition of some private man, who meant to describe the great outlines of the laws and customs of his country; which he supposed, or had been told by tradition, were first introduced by some ancient and famous king of the name of Malcolm, either Malcolm Mackenneth, or Malcolm Canmore; the former just as probably as the latter. It does not appear that the author himself ever meant that they should pass for the original statutes of that king. The whole book is a narrative or history of the regulations which he supposed had been made in times that were ancient

" in

The subject is far from being exhausted, and I am confident that any person well read in British antiquities might discover many other evidences of this imposture.

If it should be answered, That all the errors and inconsistencies of which I have spoken, may be imputed to the ignorance of transcribers, I would advise the apologist to try all the experiments of conjectural criticism upon the first eight chapters of *LL. Malcolm*, and as they shall appear genuine or fictitious after the experiment, let him adhere to his own opinion, or embrace mine.

Perhaps it may be said, That although it were admitted, that *LL. Malcolm*, from c. 1. to c. 8. are all forgeries of a later age, yet still the remaining eight chapters may be genuine. To this I answer, That if the one half of those laws be proved rotten, there can be no presumption for the other half being sound.

I am not of opinion that the other chapters of *LL. Malcolm* are more authentic than those which I have examined, although the means of detection are not so obvious; for in them the author seems rather to have copied than invented: they are all, with scarcely one exception, transcripts or pieced-up shreds from various laws.

Thus, for example, c. 10. agrees with *Statuta Wilhelmi*; c. 7. and c. 11. § 1. with *Stat. Alex. II.*; c. 14. § 2.—c. 11. § 2. is merely an inference from c. 11. § 1. which would have been implied, although not mentioned at all.;—c. 12. § 1. & 2. may be found in *Quon. Attach.*; c. 19.—c. 13. is in effect a repetition, somewhat amplified, of c. 11.

I am aware of the objection to my argument arising from c. 113. parl. 14. James III. which mentions “the statute made of before—
“dantoned horse un-schod,” and plainly alludes to *LL. Malcolm*,

“in comparison of his own. The style is every where not statutory, but historical.
“He intitled them, *The laws of Malcolm*, because he supposed that they had originally
“been instituted by some king of that name. The supposition of their being the statutes of any king, is a blunder, and a very gross one, of later writers, for which the
“author is not answerable.”

c. 3. § 4. "de homine condemnato ad mortem coram iusticiario, coronator habebit equos domitos, non ferratos." From the reference in the statute of James III. to the 3d chapter of *LL. Malcolmi*, Skene triumphantly concludes, "has leges esse authenticas." The more sober conclusion would have been, that c. 3. was in the days of James III. considered as a law enacted in the age of some former king.

I conclude with this one additional observation. Near three centuries ago, c. 3. of *LL. Malcolmi* was held to be genuine by the Scottish legislature; and yet c. 3. is perhaps the most exceptionable of the whole collection. This circumstance should teach us to be cautious in pronouncing, that a single law, and much more that a body of laws, is authentic, because we find it referred to in an act of parliament. The legislature, in the reign of James III. might hold the third chapter of *LL. Malcolmi* to be genuine, and might make it law; but no legislature can ever make forgery become truth.

F I N I S.



E R R A T A.

Pag. lin.

- 4. 18. for MSS. r. MS.
- 14. 24. for from r. that are in
- 22. As nomen proprium may imply Christian name, *del. paragraph*, "The different fires," &c.
- 24. 30. for proper r. Christian
- 25. 31. for Bothwell; r. Bothvel;
- 26. 26. & 30. for Olipant r. Oliphant
- 40. 28. for duellum, r. duello,
- 46. 17. for undeceve r. undeceive

